

## **Ballot-Petition Signature Deadlines in Michigan During a Pandemic**

*Esshaki v. Whitmer* (Terrence G. Berg, 2:20-cv-10831),  
*SawariMedia v. Whitmer* (Matthew F. Leitman,  
4:20-cv-11246), *Kishore v. Whitmer* (Sean F. Cox,  
2:20-cv-11605), *Detroit Unity Fund v. Whitmer*  
(Stephanie Dawkins Davis, 4:20-cv-12016),  
*Jobs for Downriver v. Whitmer* (George Caram Steeh,  
2:20-cv-12115), and *Eason v. Whitmer*  
(Robert H. Cleland, 3:20-cv-12252) (E.D. Mich.)

Because of Michigan's stay-at-home order early in the Covid-19 pandemic, a district judge extended the deadline for candidates' ballot-petition signatures and halved the number of signatures required. The court of appeals ruled that the judge was right on the merits but not empowered to specify the remedy. On remand, the district judge ruled that the state's implemented remedy did not quite pass constitutional muster, and the judge informed the state defendants of a possible constitutional remedy. In a second case involving a proposed statewide initiative, the state never proposed to a second judge an adequate remedy, but the case was ultimately withdrawn for failure to provide evidence of substantial signature-collection results. Two additional judges denied ballot-petition signature relief, and a fifth case before a fifth judge was dismissed by stipulation. A sixth judge dismissed an action filed more than a month after the ballot-petition deadline.

*Subject:* Getting on the ballot. *Topics:* Covid-19; getting on the ballot; ballot measure; laches; primary election; intervention; attorney fees; pro se party.

Because of social distancing made necessary by the coronavirus disease 2019 (Covid-19) infectious pandemic, a prospective primary-election candidate sought modifications of the ballot-petition signature requirements. A district judge ordered modifications, but the court of appeals ruled that although the judge was right on liability, it was not for the court to impose a specific remedy. In that case, and in another case involving a proposed initiative, the state was unable to propose remedies satisfactory to the court. As time wore on, four additional cases over ballot-petition signature requirements were unsuccessful.

### *Signature Requirements for a House of Representatives Primary-Election Candidate*

A prospective primary-election candidate for the U.S. House of Representatives filed a federal complaint in the Eastern District of Michigan on March 31, 2020, seeking relief from an April 21 deadline for filing one thousand ballot-petition signatures in light of the governor's March 24 stay-at-home or-

der issued because of the Covid-19 infectious pandemic.<sup>1</sup> With his complaint, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction.<sup>2</sup>

Judge Terrence G. Berg set the case for a telephonic hearing on April 1, instructing the plaintiff's attorney to initiate the conference call and dial in the court when all parties were present.<sup>3</sup> A prospective candidate for a judge position filed a motion on April 10 to participate as an amicus curiae.<sup>4</sup> Judge Berg set the case for an additional telephonic hearing on April 13<sup>5</sup> and a videoconference hearing initiated by the court on April 15.<sup>6</sup>

This case arose early in the pandemic, and the court was just beginning to use videoconference technology for hearings.<sup>7</sup> Among the challenges was allowing for unlimited attendance by members of the public and the news media.<sup>8</sup> The videoconference platform was set up so that the audience would be invisible.<sup>9</sup> Because of the hard work by court staff, using the videoconference platform was not a challenge for the judge or the lawyers.<sup>10</sup>

On April 14, another prospective candidate for another judge position moved to intervene in the case,<sup>11</sup> and the ACLU moved to participate as an amicus curiae.<sup>12</sup> On April 15, a prospective challenger to the plaintiff in the election filed a motion to participate as an amicus curiae;<sup>13</sup> a pro se motion sought joinder, alleging difficulties in filing a separate complaint because of the court's closure;<sup>14</sup> and another pro se filing sought participation in the case as an independent candidate for President.<sup>15</sup> Judge Berg granted inter-

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1. Complaint, *Esshaki v. Whitmer*, No. 2:20-cv-10831 (E.D. Mich. Mar. 31, 2020), D.E. 1; *Esshaki v. Whitmer*, 455 F. Supp. 3d 367, 369–70 (E.D. Mich. 2020).

2. Motion, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. Mar. 31, 2020), D.E. 2.

3. Notice, *id.* (Apr. 1, 2020), D.E. 4.

Tim Reagan interviewed Judge Berg for this report by telephone on September 17, 2020.

4. Motion, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. Apr. 10, 2020), D.E. 7; *see* Amicus Brief, *id.* (Apr. 14, 2020), D.E. 13.

5. Notice, *id.* (Apr. 10, 2020), D.E. 8.

6. Notice, *id.* (Apr. 10, 2020), D.E. 9; Transcript, *id.* (Apr. 15, 2020, filed Apr. 24, 2020), D.E. 32 [hereinafter *Esshaki* Transcript]; *Esshaki*, 455 F. Supp. 3d at 372 (“The Court heard oral argument on this motion on April 15, 2020, utilizing the social media platform Zoom.”).

7. Interview with Judge Terrence G. Berg, Sept. 17, 2020.

8. *Id.*

9. *Id.*

10. *Id.*

11. Motion, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. Apr. 14, 2020), D.E. 11 [hereinafter Apr. 14, 2020, *Esshaki* Intervention Motion].

12. Motion, *id.* (Apr. 14, 2020), D.E. 14; *see* Amicus Brief, *id.* (Apr. 14, 2020), D.E. 15.

13. Motion, *id.* (Apr. 15, 2020), D.E. 20; *see* Amicus Brief, *id.* (Apr. 15, 2020), D.E. 21; *see also* Craig Mauger, *Whitmer: Candidate Deadline “Critical,”* Detroit News, Apr. 18, 2020, at B1.

14. Motion, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. Apr. 15, 2020), D.E. 17; *see* Docket Sheet, *Beard v. Whitmer*, No. 2:20-cv-11067 (E.D. Mich. Apr. 3, 2020) (noting consolidation with the earlier case, D.E. 7).

15. Intervenor's Complaint, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. Apr. 15, 2020), D.E. 18.

vention to prospective candidates and permission to participate as amici to others.<sup>16</sup>

Judge Berg issued a preliminary injunction on Monday, April 20.<sup>17</sup> “[E]ven assuming the State has a compelling interest in the need to ensure a modicum of support through the enforcement of the signature requirement, the regulatory means to accomplish that compelling interest are not narrowly tailored to the context of the COVID-19 pandemic.”<sup>18</sup> Judge Berg also found, however, “that the State is legitimately concerned that a lowering of ballot access standards could result in ‘laundry list’ ballots crowded with names that ‘discourage voter participation and confuse and frustrate those who do participate.’”<sup>19</sup>

To fashion a remedy, Judge Berg received in camera proposals from both sides.<sup>20</sup> It was important to get the defendants’ input on remedies for the sake of workability.<sup>21</sup>

The Court considers the proposed remedies suggested by the parties, together with the facts and applicable law, and finds that a three-pronged remedy is necessary to address the nature of the harm while simultaneously respecting the interest of the State. First, the signature requirements must be lowered to account for the fact that the State’s action reduced the available time to gather signatures. Second, as the State has conceded that it could still meet its election planning obligations if the due date for signatures were extended until May 8, the Court will order that extension. Finally, to enhance the available means for gathering signatures, the State will be ordered to implement a method that would permit signatures to be gathered through the use of electronic mail. In doing so, the State is directed to design a system that is as “user-friendly” as possible to maximize its efficacy. . . .

...  
... While any such line-drawing inevitably involves some degree of arbitrariness, common sense suggests that a reasonably diligent candidate should be expected to have reached the half-way point in gathering signatures when there is only one month to go. Consequently, a reduction in the requirement by fifty percent will be ordered.<sup>22</sup>

Late in the day on May 5, the court of appeals stayed Judge Berg’s remedy, agreeing, however, that a remedy was needed.<sup>23</sup> “[F]ederal courts have no authority to dictate to the States precisely how they should conduct their

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16. Order, *id.* (Apr. 20, 2020), D.E. 22.

17. *Esshaki v. Whitmer*, 455 F. Supp. 3d 367 (E.D. Mich. 2020); see Beth LeBlanc, *Judge Extends Mich. Filing Date*, Detroit News, Apr. 21, 2020, at B1.

18. *Esshaki*, 455 F. Supp. 3d at 378.

19. *Id.* at 382 (quoting *Lubin v. Panish*, 415 U.S. 709, 715 (1974)).

20. *Id.* at 372; *Esshaki* Transcript, *supra* note 6, at 10.

21. Interview with Judge Terrence G. Berg, Sept. 17, 2020.

22. *Esshaki*, 455 F. Supp. 3d at 382–83; see *Esshaki v. Whitmer*, 456 F. Supp. 3d 897 (E.D. Mich. 2020) (denying reconsideration or a stay).

23. *Esshaki v. Whitmer*, 813 F. App’x 170 (6th Cir. 2020); see Craig Mauger, *Court: State Must Decide on Ballot Changes*, Detroit News, May 6, 2020, at A5.

elections.<sup>24</sup> The court observed that perhaps the state would voluntarily adopt the terms of Judge Berg's remedy.<sup>25</sup>

On May 6, Judge Berg ordered Michigan to file proposed reasonable accommodations by 5:00 p.m. that day and set the case for a videoconference hearing on May 7 at 3:00.<sup>26</sup> Michigan proposed an additional extension of the filing deadline to May 11 and a modification of the signature requirement to 70% of the statutory requirement.<sup>27</sup>

Judge Berg granted a May 7 request by Michigan's Republican Party to participate as an amicus curiae.<sup>28</sup> The amicus lawyering, such as by the ACLU and the Republican Party, was very helpful in this case because of the amici's expansive election-law experience.<sup>29</sup> Crucial in handling the case's time crunch was the hard and good work by Judge Berg's law clerks.<sup>30</sup>

Judge Berg heard the case on May 7 and 18.<sup>31</sup> On May 13, he granted a judicial candidate's May 11 motion to intervene.<sup>32</sup> He granted another judicial candidate's May 18 motion to intervene when he issued his second preliminary injunction on May 20.<sup>33</sup>

The state's accommodations included a 50% reduction in the signature requirement if filed by May 8, but the state agreed to put on the ballot only candidates who had either filed a statement of organization or established a candidate committee by March 10, the date that Michigan's state of emergency began.<sup>34</sup> Judge Berg determined that the March 10 deadline was not narrowly tailored to the state's interest in weeding out opportunistic candidates and declared it unconstitutional.<sup>35</sup> Restrained by the court of appeals from ordering a remedy, Judge Berg suggested that constitutional compliance would result from candidates' being given two days to file signatures gathered by May 8.<sup>36</sup>

#### *A Statewide Initiative*

On May 4, the day before the court of appeals stayed Judge Berg's remedy, an organization and three voters supporting a proposed statewide initiative filed a federal complaint in the Eastern District challenging Michigan's election

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24. *Esshaki*, 813 F. App'x at 172.

25. *Id.* at 172–73.

26. Docket Sheet, *Esshaki v. Whitmer*, No. 2:20-cv-10831 (E.D. Mich. Mar. 31, 2020) [hereinafter *Esshaki* Docket Sheet].

27. Proposal, *id.* (May 6, 2020), D.E. 38.

28. *Esshaki* Docket Sheet, *supra* note 26.

29. Interview with Judge Terrence G. Berg, Sept. 17, 2020.

30. *Id.*

31. *Esshaki* Docket Sheet, *supra* note 26 (minutes, May 7 and 18, 2020).

32. Order, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. May 13, 2020), D.E. 52; Motion, *id.* (May 11, 2020), D.E. 47 [hereinafter May 13, 2020, *Esshaki* Intervention Motion].

33. *Esshaki v. Whitmer*, 461 F. Supp. 3d 646, 651 (E.D. Mich. 2020); Motion, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. May 18, 2020), D.E. 58.

34. *Esshaki*, 461 F. Supp. 3d at 646–47 & 649 n.1.

35. *Id.* at 648–49; see Mike Martindale, *Ruling Revives 2 Candidates' Ballot Hopes*, Detroit News, May 21, 2020, at A17.

36. *Esshaki*, 461 F. Supp. 3d at 650–51.

officials' not applying Judge Berg's order to ballot petitions for initiatives.<sup>37</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>38</sup>

Judge Matthew F. Leitman set the case for a May 21 telephonic status conference, posting the contact information in the public record.<sup>39</sup> After some briefing, Judge Leitman set the case for a June 5 videoconference hearing, noting that the court would provide the link to participants.<sup>40</sup> An attorney entered an appearance for the organizational plaintiff on June 1.<sup>41</sup>

A big believer in not reinventing the wheel, Judge Leitman reviewed Judge Berg's case and other similar cases around the country.<sup>42</sup> On June 11, Judge Leitman applied the logic of Judge Berg's order to general-election initiatives.<sup>43</sup> "Because Defendants have not shown that their enforcement of the signature requirement and filing deadline are narrowly tailored to the present circumstances, those requirements cannot survive a strict scrutiny analysis as applied to Plaintiffs."<sup>44</sup> Although Judge Leitman enjoined the signature requirement as unreasonable, Judge Leitman did not specify a more precise remedy.<sup>45</sup>

Michigan proposed as a remedy modifying neither the number of signatures required nor the submission deadline for the 2020 election; instead, Michigan proposed that the limitation period for signatures be tolled so that signatures already collected could be used for the 2022 election.<sup>46</sup>

Following a June 16 attorneys-only videoconference, Judge Leitman rejected the proposed remedy and set the case for another videoconference on June 22.<sup>47</sup> On June 18, Michigan submitted an alternative proposed remedy extending the signature-filing deadline for the November election from May 27 to July 6.<sup>48</sup>

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37. Complaint, *SawariMedia LLC v. Whitmer*, No. 4:20-cv-11246 (E.D. Mich. May 4, 2020), D.E. 1.

38. Motion, *id.* (May 4, 2020), D.E. 2.

39. Notice, *id.* (May 21, 2020), D.E. 6.

Tim Reagan interviewed Judge Leitman for this report by telephone on September 18, 2020.

40. Notice, *SawariMedia LLC*, No. 4:20-cv-11246 (E.D. Mich. May 28, 2020), D.E. 10; *see* Transcript, *id.* (June 5, 2020, filed Oct. 16, 2020), D.E. 49.

41. Notice of Appearance, *id.* (June 1, 2020), D.E. 11.

42. Interview with Judge Matthew F. Leitman, Sept. 18, 2020.

43. *SawariMedia LLC v. Whitmer*, 466 F. Supp. 3d 758 (E.D. Mich. 2020), *appeal voluntarily dismissed*, Order, *SawariMedia LLC v. Whitmer*, No. 20-1594 (6th Cir. Dec. 9, 2020), D.E. 33.

44. *SawariMedia LLC*, 466 F. Supp. 3d at 776.

45. *Id.* at 778–79.

46. Defendants' Proposed Remedy, *SawariMedia LLC*, No. 4:20-cv-11246 (E.D. Mich. June 15, 2020), D.E. 18.

47. Order, *id.* (June 16, 2020), D.E. 22; Docket Sheet, *id.* (May 4, 2020) [hereinafter *SawariMedia LLC* Docket Sheet]; *see* Notice, *id.* (June 16, 2020), D.E. 20.

48. Defendant's Second Proposed Remedy, *id.* (June 18, 2020), D.E. 23; *see* *SawariMedia, LLC v. Whitmer*, 963 F.3d 595, 597 (6th Cir. 2020).

In preparation for the June 22 videoconference, Judge Leitman obtained consent from all parties to conduct separate settlement discussions with the two sides in videoconference breakout rooms.<sup>49</sup> A law clerk communicated with all parties and reported to Judge Leitman only whether there was unanimous agreement for separate sessions, not which party, if any, objected.<sup>50</sup> Settlement was not achieved, and Judge Leitman orally rejected the defendants' proposal:

I'm going to sustain the objections to this remedy and the original injunction precluding the defendants from keeping this initiative off the ballot by operation of the constitutional provision concerning the minimum number of signatures and the filing deadline, the state defendants are still enjoined from keeping these plaintiffs off the ballot on that basis.<sup>51</sup>

Judge Leitman issued a written ruling on the following day.<sup>52</sup>

Michigan immediately appealed Judge Leitman's rulings.<sup>53</sup> On June 24, Judge Leitman denied Michigan a stay pending appeal;<sup>54</sup> the court of appeals did so on July 2.<sup>55</sup> Judge Leitman set the case for another videoconference on July 13.<sup>56</sup>

On July 7, Michigan informed Judge Leitman and the plaintiffs that they intended to seek a stay from the Supreme Court, and they intended no additional remedy proposal.<sup>57</sup> Judge Leitman set the case for a videoconference on the next day.<sup>58</sup> At the conference, Judge Leitman ordered the plaintiffs to provide the court with an update on their signature-collection efforts,<sup>59</sup> and Judge Leitman again set the case for a videoconference on July 13 at 4:00 p.m.<sup>60</sup>

Unable to provide evidence of substantial signature collections,<sup>61</sup> the plaintiffs voluntarily dismissed the action on July 23.<sup>62</sup> On that day, Michigan withdrew its Supreme Court stay application.<sup>63</sup>

Judge Leitman greatly appreciated the flexibility afforded by videoconference technology.<sup>64</sup> Video sessions have many benefits over audio sessions.

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49. Transcript at 6–7, *SawariMedia LLC*, No. 4:20-cv-11246 (E.D. Mich. June 22, 2020, filed June 23, 2020), D.E. 28.

50. *Id.* at 6.

51. *Id.* at 13.

52. Order, *id.* (June 23, 2020), D.E. 25.

53. Notice of Appeal, *id.* (June 23, 2020), D.E. 26.

54. Opinion, *id.* (June 24, 2020), D.E. 32, 2020 WL 3447694.

55. *SawariMedia, LLC v. Whitmer*, 963 F.3d 595, (6th Cir. 2020).

56. Notice, *SawariMedia LLC*, No. 4:20-cv-11246 (E.D. Mich. July 2, 2020), D.E. 35.

57. Defendants' Statement, *id.* (July 7, 2020), D.E. 36.

58. Notice, *id.* (July 7, 2020), D.E. 37.

59. *SawariMedia LLC* Docket Sheet, *supra* note 47.

60. Notice, *SawariMedia LLC*, No. 4:20-cv-11246 (E.D. Mich. July 8, 2020), D.E. 38.

61. Plaintiffs' Declaration, *id.* (July 23, 2020), D.E. 42.

62. Voluntary Dismissal, *id.* (July 23, 2020), D.E. 43; *see* Order, *id.* (Oct. 19, 2020), D.E. 50 (vacating the injunction).

63. Letter, *Whitmer v. SawariMedia, LLC*, No. 20A1 (U.S. July 23, 2020).

64. Interview with Judge Matthew F. Leitman, Sept. 18, 2020.

Among other things, it is much easier on the court reporter.<sup>65</sup> Although in-person sessions are even better, the ability to hold proceedings by videoconference makes scheduling easier, which is important in cases with a time crunch.<sup>66</sup>

There was an effort to make open to the public any session that under normal circumstances would be in open court.<sup>67</sup> If settlement negotiations were expected during the session, Judge Leitman was inclined to not make the session open to the public, subject to the parties' agreement.<sup>68</sup>

#### *A Minor Party's Presidential Candidate*

A minor party's candidates for President and Vice President filed a federal complaint in the Eastern District on June 18, challenging the signature requirements for getting on the ballot in Michigan.<sup>69</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>70</sup>

On the next day, Judge Sean F. Cox set the case for a telephonic status conference on June 23, providing contact information in the public record.<sup>71</sup> After the conference, Judge Cox set the case for oral arguments by video on July 2, again providing contact information in the public record.<sup>72</sup> A few days before the hearing, Judge Cox ordered the plaintiffs to submit information about signatures already collected.<sup>73</sup>

On July 8, Judge Cox denied the plaintiffs immediate relief.<sup>74</sup> "A reasonably diligent candidate could be expected to satisfy the State's ballot-access requirements under the circumstances presented . . . ."<sup>75</sup> The court of appeals affirmed Judge Cox's decision on August 24.<sup>76</sup>

The plaintiffs dismissed the action voluntarily on September 9.<sup>77</sup>

#### *A Detroit Initiative*

A set of proponents of a municipal initiative filed a federal complaint in the Eastern District against Michigan and Detroit election officials at 3:12 p.m. on July 28, challenging that day as the due date for ballot-petition signa-

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65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. Complaint, *Kishore v. Whitmer*, No. 2:20-cv-11605 (E.D. Mich. June 18, 2020), D.E. 1; *Kishore v. Whitmer*, 972 F.3d 745, 749 (6th Cir. 2020).

70. Motion, *Kishore*, No. 2:20-cv-11605 (E.D. Mich. June 18, 2020), D.E. 3.

71. Notice, *id.* (June 19, 2020), D.E. 4.

72. Order, *id.* (June 23, 2020), D.E. 6; Notice, *id.* (June 23, 2020), D.E. 7; Transcript, *id.* (July 2, 2020, filed July 9, 2020), D.E. 18.

73. Order, *id.* (June 29, 2020), D.E. 12.

74. Opinion, *id.* (July 8, 2020), D.E. 17, 2020 WL 3819125.

75. *Id.* at 2.

76. *Kishore v. Whitmer*, 972 F.3d 745 (6th Cir. 2020).

77. Notice, *Kishore*, No. 2:20-cv-11605 (E.D. Mich. Sept. 9, 2020), D.E. 25.

tures.<sup>78</sup> At 3:37, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>79</sup>

The court assigned the case to Judge Stephanie Dawkins Davis,<sup>80</sup> who conferred with other judges on her court presiding over ballot-petition-signature cases regarding case-management strategies.<sup>81</sup> An important first step is for the plaintiff to identify who will be representing the defendants and find out when they can meet with the court.<sup>82</sup>

Judge Davis set the case for an attorneys-only videoconference on July 29, the day after the complaint was filed.<sup>83</sup> She much preferred videoconference proceedings to telephone proceedings; it is much easier to know who is speaking.<sup>84</sup>

She then set the case for a videoconference hearing on Friday, August 14, posting contact information in the public record.<sup>85</sup> At the hearing, Judge Davis reminded the participants, “Parties are not permitted to make any recordings or take any pictures during the course of the proceedings.”<sup>86</sup> From the bench, she denied the plaintiffs immediate relief.<sup>87</sup> An opinion followed on Monday.<sup>88</sup>

The plaintiffs unreasonably delayed in asserting their rights.<sup>89</sup> “Moreover, there were several methods available to Plaintiffs to obtain the requisite signatures without violating the Governor’s social distancing requirements.”<sup>90</sup> The court of appeals affirmed Judge Davis’s decision on September 2,<sup>91</sup> and Judge Davis entered a stipulated dismissal of the case on September 22.<sup>92</sup>

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78. Complaint, *Detroit Unity Fund v. Whitmer*, No. 4:20-cv-12016 (E.D. Mich. July 28, 2020), D.E. 1; *Detroit Unity Fund v. Whitmer*, 819 F. App’x 421, 422 (6th Cir. 2020); Opinion at 2, *Detroit Unity Fund*, No. 4:20-cv-12016 (E.D. Mich. Aug. 17, 2020), D.E. 12 [hereinafter *E.D. Mich. Detroit Unity Fund Opinion*], 2020 WL 6580458.

79. Motion, *Detroit Unity Fund*, No. 4:20-cv-12016 (E.D. Mich. July 28, 2020), D.E. 2; *Detroit Unity Fund*, 819 F. App’x at 422; E.D. Mich. *Detroit Unity Fund Opinion*, *supra* note 78, at 2.

80. Docket Sheet, *Detroit Unity Fund*, No. 4:20-cv-12016 (E.D. Mich. July 28, 2020).

Tim Reagan interviewed Judge Davis for this report by telephone on September 16, 2020. Judge Davis was elevated to the court of appeals on June 14, 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

81. Interview with Judge Stephanie Dawkins Davis, Sept. 16, 2020.

82. *Id.*

83. Notice, *Detroit Unity Fund*, No. 4:20-cv-12016 (E.D. Mich. July 28, 2020), D.E. 5.

84. Interview with Judge Stephanie Dawkins Davis, Sept. 16, 2020.

85. Notice, *Detroit Unity Fund*, No. 4:20-cv-12016 (E.D. Mich. July 29, 2020), D.E. 6.

86. Transcript at 5, *id.* (Aug. 14, 2020, filed Aug. 24, 2020), D.E. 13.

87. *Id.* at 26; E.D. Mich. *Detroit Unity Fund Opinion*, *supra* note 78, at 2; *Detroit Unity Fund v. Whitmer*, 819 F. App’x 421, 422 (6th Cir. 2020).

88. E.D. Mich. *Detroit Unity Fund Opinion*, *supra* note 78.

89. *Id.* at 12.

90. *Id.* at 20.

91. *Detroit Unity Fund*, 819 F. App’x 421.

92. Dismissal Order, *Detroit Unity Fund*, No. 4:20-cv-12016 (E.D. Mich. Sept. 22, 2020), D.E. 19.



### *Other Municipal Initiatives*

Five local ballot-question committees filed a federal complaint in the Eastern District against state and local election officials on August 5, seeking relief from the plaintiffs' inability to satisfy ballot-petition signature requirements by the deadline for the November 3 general election.<sup>93</sup> On the next day, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction: "time is of the essence in this matter, as absent voter ballots for the November 2020 general election must be printed and mailed to military and overseas voters by September 19, 2020."<sup>94</sup>

On August 7, Judge George Caram Steeh set the case for hearing by video conference on August 31—providing contact information in the public record—with briefing to be completed by August 24.<sup>95</sup> Judge Steeh knew that especially for a case involving voting it would be important for the public to be able to observe the proceeding.<sup>96</sup>

On August 25, however, the parties stipulated dismissal.<sup>97</sup>

### *An Independent Candidate for Congress*

A prospective independent candidate for Congress in the November general election filed a federal complaint in the Eastern District on Saturday, August 19, seeking relief from the July 16 filing deadline.<sup>98</sup> With his complaint, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction.<sup>99</sup>

On Tuesday, Judge Robert H. Cleland denied the plaintiff a temporary restraining order, not persuaded by the filings' "broad generalizations," and set the case for a September 10 videoconference hearing, posting contact information in the public record.<sup>100</sup>

On September 9, however, Judge Cleland determined that a hearing was not necessary, and he denied the plaintiff a preliminary injunction.<sup>101</sup> On the one hand, the plaintiff "does not explain why he waited 34 days after the

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93. Complaint, *Jobs for Downriver v. Whitmer*, No. 2:20-cv-12115 (E.D. Mich. Aug. 5, 2020), D.E. 1.

94. Motion at 3, *id.* (Aug. 6, 2020), D.E. 3.

95. Notice, *id.* (Aug. 7, 2020), D.E. 6.

Tim Reagan interviewed Judge Steeh for this report by telephone on September 16, 2020.

96. Interview with Judge George Caram Steeh, Sept. 16, 2020.

97. Stipulation, *Jobs for Downriver*, No. 2:20-cv-12115 (E.D. Mich. Aug. 25, 2020), D.E. 34.

98. Complaint, *Eason v. Whitmer*, No. 3:20-cv-12252 (E.D. Mich. Aug. 19, 2020), D.E. 1; *Eason v. Whitmer*, 485 F. Supp. 3d 876, 877–78 (E.D. Mich. 2020).

99. Motion, *Eason*, No. 3:20-cv-12252 (E.D. Mich. Aug. 19, 2020), D.E. 2; *Eason*, 485 F. Supp. 3d at 878.

100. Order, *Eason*, No. 3:20-cv-12252 (E.D. Mich. Aug. 21, 2020), D.E. 6, 2020 WL 4923694; Notice, *id.* (Sept. 2, 2020), D.E. 11; *see Eason*, 485 F. Supp. 3d at 878.

101. *Eason*, 485 F. Supp. 3d 876.

deadline to file this action.”<sup>102</sup> On the other hand, “Plaintiff submits scant information regarding his signature collection efforts.”<sup>103</sup>

The plaintiff voluntarily dismissed his action that day.<sup>104</sup>

*The Conclusion of Judge Berg’s Case*

On July 30, Judge Berg denied intervention by a plaintiff seeking relief related to the November general election instead of the primary election.<sup>105</sup>

The plaintiff in Judge Berg’s case prevailed in the August 4 primary election.<sup>106</sup>

On September 2, 2020, Judge Berg dismissed the action with prejudice as moot, except for attorney-fee claims.<sup>107</sup> The court of appeals ordered similar relief one week later.<sup>108</sup> On March 30, 2021, Judge Berg issued attorney-fee awards of \$15,423.25<sup>109</sup> and \$8,249.18<sup>110</sup> to two judicial-candidate intervenors.

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102. *Id.* at 880.

103. *Id.* at 879.

104. Voluntary Dismissal, *Eason*, No. 3:20-cv-12252 (E.D. Mich. Sept. 9, 2020), D.E. 13.

105. Order, *Esshaki v. Whitmer*, No. 2:20-cv-10831 (E.D. Mich. July 30, 2020), D.E. 66; *see* Intervention Motion, *id.* (July 27, 2020), D.E. 65.

106. *See* Melissa Nann Burke, *Stevens Picks Up U.S. Chamber’s Backing*, Detroit News, Sept. 3, 2020, at A5; Leonard N. Fleming, *Esshaki Holds Slim Lead in Early Returns*, Detroit News, Aug. 5, 2020, at A6.

107. Order, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. Sept. 2, 2020), D.E. 71, 2020 WL 5900965.

108. Order, *Esshaki v. Whitmer*, No. 20-1336 (6th Cir. Sept. 9, 2020), D.E. 27.

109. Opinion, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. Mar. 30, 2021), D.E. 83, 2021 WL 1192913; *see* May 13, 2020, *Esshaki* Intervention Motion, *supra* note 32.

110. Opinion, *Esshaki*, No. 2:20-cv-10831 (E.D. Mich. Mar. 30, 2021), D.E. 81, 2021 WL 1192915; *see* Apr. 14, 2020, *Esshaki* Intervention Motion, *supra* note 11.