

Valid Recall Signatures

Davenport v. County of Genesee

(*Arthur J. Tarnow, E.D. Mich. 2:10-cv-13503*)

On August 31, 2010, the Committee to Recall Dayne Walling, the mayor of Flint, Michigan, learned that it had not submitted enough valid signatures to place the recall of Mayor Walling on the November 2 ballot.¹ That day, the Committee filed an action in Genesee County Circuit Court seeking to place the recall on the ballot.² Because the complaint included federal constitutional claims, the county removed the action to federal court in Detroit on September 2.³ The Committee moved on September 3 for a preliminary injunction.⁴

The court assigned the case to Judge Sean F. Cox, but he was out of town, so Judge Arthur J. Tarnow handled preliminary matters.⁵ Judge Tarnow handles all emergency cases the same: he waits until the other side is served before he conducts a proceeding.⁶ A law clerk or case manager typically communicates with the parties to set up the first proceeding.⁷

Judge Tarnow set a hearing on the injunction motion for September 9.⁸ He also held hearings on September 10 and 14.⁹ On September 17, Judge Tarnow determined that although “there may have been some errors by Defendants in removing valid signatures, Plaintiffs have not met their burden in showing that the issuance of a preliminary injunction in this case is warranted.”¹⁰

Defendants are not required to use the best method of signature review. Human error is sometimes part of the process. Deference must be given to the local clerks. Even if the Clerk had wrongfully interpreted or misapplied the law, her actions would not rise to a Fourteenth Amendment violation, which could only be established with a showing of discrimination on her part.¹¹

1. [Davenport v. Genesee Cnty.](#), 737 F. Supp. 2d 809, 811 (E.D. Mich. 2010) (noting that of over 14,000 signatures were submitted, 7,484 were determined to be valid, which was fewer than the 8,004 required); see Michael Cooper, *Angry Voters Shout “Recall” at City Halls*, N.Y. Times, Sept. 23, 2010, at A1 (reporting that the recall effort began after the mayor “laid off police officers and firefighters to try to make ends meet in a city with an unemployment rate of more than 25 percent”).

2. *Id.* at 810–11.

3. [Notice of Removal](#), *Davenport v. Cnty. of Genesee*, No. 2:10-cv-13503 (E.D. Mich. Sept. 2, 2010), D.E. 1; [Davenport](#), 737 F. Supp. 2d at 810–11.

4. [Preliminary Injunction Motion](#), *Davenport*, No. 2:10-cv-13503 (E.D. Mich. Sept. 3, 2010), D.E. 5; [Davenport](#), 737 F. Supp. 2d at 810.

5. [Docket Sheet](#), *Davenport*, No. 2:10-cv-13503 (E.D. Mich. Sept. 2, 2010); Interview with Hon. Arthur J. Tarnow, Oct. 3, 2012. Tim Reagan interviewed Judge Tarnow for this report by telephone.

6. Interview with Hon. Arthur J. Tarnow, Oct. 3, 2012.

7. *Id.*

8. [Notice](#), *Davenport*, No. 2:10-cv-13503 (E.D. Mich. Sept. 7, 2010), D.E. 9.

9. [Docket Sheet](#), *supra* note 5.

10. [Davenport](#), 737 F. Supp. 2d at 815; see Cooper, *supra* note 1 (reporting that after Judge Tarnow’s ruling “the mayor posted the news on his blog: ‘Flint’s recall fever has broken’”).

11. [Davenport](#), 737 F. Supp. 2d at 814.

The case was dismissed voluntarily on December 16.¹²

12. [Stipulated Order](#), *Davenport*, No. 2:10-cv-13503 (E.D. Mich. Dec. 16, 2010), D.E. 30 (signed by Judge Cox).