

## **Ballot Petition Circulators Do Not Have to Be Registered Voters**

*Davis v. Johnson (2:14-cv-11818)*  
*and Moore v. Johnson (2:14-cv-11903)*  
(*Gershwin A. Drain and Matthew F. Leitman, E.D. Mich.*)

On May 6, 2014, a Highland Park school board member wishing to run for reelection filed a federal complaint in the Eastern District of Michigan challenging a state requirement that candidacy petition signatures be collected by registered voters.<sup>1</sup> He pleaded a desire to submit his petitions by May 19, stating that “personal obligations thereafter . . . will prevent him from seeking signatures after said date.”<sup>2</sup> On the following day, the school board member filed a motion for a temporary restraining order.<sup>3</sup>

On May 8, Judge Gershwin A. Drain set the case for hearing on May 15.<sup>4</sup> On May 13, however, Judge Drain recused himself.<sup>5</sup>

Two voters filed a second federal complaint in the district on May 12 challenging the exclusion of candidate petition signatures for John Conyers’s congressional reelection because the signatures were gathered by persons not registered to vote in Michigan.<sup>6</sup> The voters designated their case as related to the school board member’s.<sup>7</sup>

The court reassigned Judge Drain’s case to Judge Matthew F. Leitman and then assigned the related case to Judge Leitman, who held a telephonic status conference with the parties on May 13.<sup>8</sup> On May 14, Judge Leitman scheduled another status conference for May 19 and a hearing for May 21.<sup>9</sup> Judge Leitman also held a telephonic status conference on May 15.<sup>10</sup>

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1. Complaint, *Davis v. Johnson*, No. 2:14-cv-11818 (E.D. Mich. May 6, 2014), D.E. 1.

2. *Id.* at 10.

3. Temporary Restraining Order Motion, *id.* (May 7, 2014), D.E. 5.

4. Order, *id.* (May 8, 2014), D.E. 9; *see Activist Asks Wayne County Clerk to Certify Conyers—or Wait for Hearing*, Detroit Free Press, May 13, 2014, at A4.

5. Order, *Davis*, No. 2:14-cv-11818 (E.D. Mich. May 13, 2014), D.E. 16.

6. Complaint, *Moore v. Johnson*, No. 2:14-cv-11903 (E.D. Mich. May 12, 2014), D.E. 1; *see Amended Complaint, id.* (May 15, 2014), D.E. 12; *see also Conyers Seeks to Get Back on Ballot*, Boston Globe, May 17, 2014, at A2.

7. Notice, *Moore*, No. 2:14-cv-11903 (E.D. Mich. May 12, 2014), D.E. 2.

8. Docket Sheet, *id.* (May 12, 2014) [hereinafter *Moore* Docket Sheet]; Docket Sheet, *Davis*, No. 2:14-cv-11818 (E.D. Mich. May 6, 2014) [hereinafter *Davis* Docket Sheet]; Reassignment Order, *id.* (May 13, 2014), D.E. 6 (reassigning the second case from Judge Linda V. Parker to Judge Leitman).

Tim Reagan interviewed Judge Leitman for this report by telephone on April 30, 2015.

9. Order, *Moore*, No. 2:14-cv-11903 (E.D. Mich. May 14, 2014), D.E. 10; Order, *Davis*, No. 2:14-cv-11818 (E.D. Mich. May 14, 2014), D.E. 17; Transcript, *id.* (May 21, 2014, filed May 30, 2014), D.E. 31 [hereinafter May 21, 2014, Transcript].

10. Order, *Moore*, No. 2:14-cv-11903 (E.D. Mich. May 15, 2014), D.E. 22 [hereinafter May 15, 2014, *Moore* Order]; *Moore* Docket Sheet, *supra* note 8.

The Conyers case was more time-sensitive than the first case, and Judge Leitman used the telephone status conferences to press the parties on time deadlines for printing ballots.<sup>11</sup> Judge Leitman is a big believer in telephone status conferences, and they worked well here to help the court and the parties establish a doable schedule.<sup>12</sup>

An aspiring candidate for Conyers's seat and the aspiring candidate's campaign manager, whose challenge to Conyers's signatures resulted in Conyers's disqualification, moved to intervene in defense of the voters' case on May 15.<sup>13</sup> They also moved to participate in the school board member's case as amici curiae.<sup>14</sup> Noting "essentially a complete overlap between the arguments presented by amici and those presented by Defendants," Judge Leitman granted the amicus curiae motion but denied the intervention motion.<sup>15</sup> On May 15 and 16, the Wayne County Election Commission moved to intervene against the two actions.<sup>16</sup> Judge Leitman granted these motions.<sup>17</sup>

The court arranged to use an overflow courtroom for the Wednesday, May 21, hearing,<sup>18</sup> but the overflow courtroom did not turn out to be necessary.<sup>19</sup> Judge Leitman had received his commission on March 14.<sup>20</sup> "It was a privilege to have this one be [his] first real substantive argument."<sup>21</sup> Judge Leitman announced that he would rule on Friday, "out of respect for, for lack of a better word, the dignity and comity for the Secretary of State of Michigan to take a first look at something before a Federal Court assesses its constitutionality."<sup>22</sup> The secretary promised that she would determine by noon on Friday if Conyers's signatures were insufficient for reasons that would obviate the need to rule on the registration requirement.<sup>23</sup>

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11. Interview with Hon. Matthew F. Leitman, Apr. 30, 2015.

12. *Id.*

13. Intervention Motion, *Moore*, No. 2:14-cv-11903 (E.D. Mich. May 15, 2014), D.E. 14; see *Sheffield Challenges Conyers Signatures*, Detroit Free Press, Apr. 30, 2014, at A5.

14. Motion, *Davis*, No. 2:14-cv-11818 (E.D. Mich. May 15, 2014), D.E. 19.

15. Order, *Moore*, No. 2:14-cv-11903 (E.D. Mich. May 23, 2014), D.E. 33, 2014 WL 2171097; May 15, 2014, *Moore* Order, *supra* note 10; *Davis* Docket Sheet, *supra* note 8.

16. Intervention Motion, *id.* (May 16, 2014), D.E. 25; Intervention Motion, *Moore*, No. 2:14-cv-11903 (E.D. Mich. May 15, 2014), D.E. 23.

17. *Moore* Docket Sheet, *supra* note 8; *Davis* Docket Sheet, *supra* note 8.

On June 10, 2014, the election commission withdrew from the school board member's case. Notice, *Davis*, No. 2:14-cv-11818 (E.D. Mich. June 10, 2014), D.E. 36.

18. May 21, 2014, Transcript, *supra* note 9, at 8.

19. Interview with Hon. Matthew F. Leitman, Apr. 30, 2015.

20. Federal Judicial Center Biographical Directory of Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

21. May 21, 2014, Transcript, *supra* note 9, at 139.

"The briefing schedule has been intense. You guys have met every schedule. The written product is terrific." *Id.* at 6.

22. *Id.* at 139

23. *Id.* at 116-17; see *id.* at 43-52, 74-76 (argument by the secretary's attorney that a review of signatures remained in process).

On Friday, May 23, Judge Leitman ordered Conyers's name placed on the August 5 primary election ballot.<sup>24</sup>

Judge Leitman's strategy was to rule quickly to allow time for a thoughtful appeal, accommodating the interests of both the parties and the court of appeals and allowing for him to issue a more detailed opinion while the parties were working on an appeal.<sup>25</sup> In the event, there was no appeal.<sup>26</sup>

Judge Leitman ordered additional arguments in the other case.<sup>27</sup> After a June 3 evidentiary hearing at which the school board member plaintiff was examined as a witness,<sup>28</sup> Judge Leitman denied relief on June 17, because the board member could secure a place on the November ballot by paying a \$100 fee.<sup>29</sup>

On July 1, Judge Leitman issued a consent judgment in Conyers's case proscribing a requirement that ballot petition circulators be registered voters.<sup>30</sup> Judge Leitman granted a stipulated dismissal in the other case on July 21.<sup>31</sup>

Conyers was re-elected on November 4.<sup>32</sup> On December 18, the school board candidate was sentenced to 18 months in prison for embezzling nearly \$200,000 from the schools.<sup>33</sup>

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24. Order, *Moore v. Johnson*, No. 2:14-cv-11903 (E.D. Mich. May 23, 2014), D.E. 35; see Julie Bosman, *Judge Allows Conyers to Be on the Ballot in Michigan*, N.Y. Times, May 24, 2014, at A13; *Federal Judge's Ruling Puts Conyers on Primary Ballot*, Detroit Free Press, May 24, 2014, at A1; *Judge Orders Conyers Put on Ballot*, Boston Globe, May 24, 2014, at A2; Sean Sullivan, *Judge Orders Rep. Conyers Back on Ballot*, Wash. Post, May 24, 2014, at A2.

25. Interview with Hon. Matthew F. Leitman, Apr. 30, 2015.

26. *Id.*

27. Order, *Davis v. Johnson*, No. 2:14-cv-11818 (E.D. Mich. May 23, 2014), D.E. 30, 2014 WL 2158424.

28. Transcript, *id.* (June 3, 2014, filed June 14, 2014), D.E. 37.

29. Opinion, *id.* (June 17, 2014), D.E. 38, 2014 WL 2744128.

30. Consent Judgment, *Moore v. Johnson*, No. 2:14-cv-11903 (E.D. Mich. July 1, 2014), D.E. 41.

On September 15, 2014, Judge Leitman awarded the plaintiffs \$114,999.50 in attorney fees. Stipulated Order, *id.* (Sept. 15, 2014), D.E. 44.

31. Stipulated Dismissal, *Davis*, No. 2:14-cv-11818 (E.D. Mich. July 21, 2014), D.E. 53.

32. See David Shepardson, Jim Lynch & Lauren Abdel-Razzaq, *Mich. Dems Hope to Buck Republican Tide in U.S. House*, Detroit News, Nov. 5, 2014, at A1.

33. Judgment, *United States v. Davis*, No. 2:12-cr-20224 (E.D. Mich. Dec. 29, 2014), D.E. 75; see Robert Snell, *Activist Robert Davis Sentenced to 18 Months*, Detroit News, Dec. 19, 2014, at A4.