

## A Citizenship Checkbox on Ballot Applications

*Bryanton v. Johnson*

*(Paul D. Borman, E.D. Mich. 2:12-cv-14114)*

On September 17, 2012, a county clerk and three voters filed a federal complaint against a state's secretary of state challenging her planned inclusion of a citizenship verification question on ballot applications in the upcoming general election. The district court heard a motion for a preliminary injunction on October 5. After a six-hour hearing, the court granted the injunction. The ballot-application question violated equal protection because it was not applied uniformly and because evidence at the hearing showed that voters who failed to check the box would still be permitted to vote.

*Subject:* Voting procedures. *Topics:* Citizenship; equal protection; case assignment.

Ingham County's clerk and three voters filed a federal complaint against Michigan's secretary of state in the Eastern District of Michigan on September 17, 2012, challenging the secretary's planned inclusion of a citizenship-verification question on voters' ballot applications for the upcoming general election.<sup>1</sup> Three days later, the plaintiffs filed a motion for a preliminary injunction.<sup>2</sup>

The court assigned the case to Judge Nancy G. Edmunds, who was immersed in a criminal trial against Detroit's former mayor, so she disqualified herself from this time-sensitive case and the case was randomly reassigned to Judge Paul D. Borman.<sup>3</sup>

Judge Borman set a hearing for October 5 and ordered the attorneys to meet with each other in advance and prepare for the hearing as they would prepare for a bench trial.<sup>4</sup> He wanted the parties to have an opportunity to come to an agreement.<sup>5</sup>

On the day before the hearing, Judge Borman denied an evidentiary motion in limine<sup>6</sup> and a motion by the secretary for a subordinate to appear in

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1. Complaint, *Bryanton v. Johnson*, No. 2:12-cv-14114 (E.D. Mich. Sept. 17, 2012), D.E. 1; see *Secretary of State Defends Citizenship Question on Ballots*, Detroit News, Sept. 26, 2012, at A4.

2. Preliminary-Injunction Motion, *Bryanton*, No. 2:12-cv-14114 (E.D. Mich. Sept. 20, 2012), D.E. 4.

3. Reassignment Order, *id.* (Sept. 20, 2012), D.E. 5; Interview with Hon. Nancy G. Edmunds, Oct. 24, 2012; see Robert Snell & Mike Wilkinson, *Kilpatrick Faces Diverse Jury*, Detroit News, Sept. 20, 2012, at A4.

Tim Reagan interviewed Judge Edmunds for this report by telephone on October 24, 2012, and Tim Reagan interviewed Judge Borman for this report by telephone on November 9, 2012.

4. Order, *Bryanton*, No. 2:12-cv-14114 (E.D. Mich. Sept. 27, 2012), D.E. 15.

5. Interview with Hon. Paul D. Borman, Nov. 9, 2012.

6. Order, *Bryanton*, No. 2:12-cv-14114 (E.D. Mich. Sept. 4, 2012), D.E. 32.

her place.<sup>7</sup> Among the important reasons for the secretary's presence was her settlement authority.<sup>8</sup> After the six-hour hearing, Judge Borman granted the plaintiffs a preliminary injunction.<sup>9</sup> In an opinion issued five days later, he explained that the secretary's ballot-application question violated equal protection because it was not applied uniformly, because it would create time-consuming questioning and confusion at the polls, and because evidence at the hearing showed that voters who failed to check the box would still be permitted to vote.<sup>10</sup>

The action was dismissed by stipulation on May 29, 2013.<sup>11</sup>

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7. Order, *id.* (Sept. 4, 2012), D.E. 31; see Transcript at 6–7, *id.* (Oct. 5, 2012, filed Oct. 24, 2012), D.E. 42 (noting the secretary's presence); see also Christina Hall, *Checking the Check Boxes*, Manistee News Advocate, Oct. 6, 2012, at 6A.

8. Interview with Hon. Paul D. Borman, Nov. 9, 2012.

9. Transcript, *supra* note 7, at 191–97; see *Citizen Box Ordered Off Ballot Applications*, Detroit News, Oct. 11, 2012, at A5; *Citizenship Question Ordered Off Voter Form*, Detroit News, Oct. 6, 2012, at A1.

10. *Bryanton v. Johnson*, 902 F. Supp. 2d 983 (E.D. Mich. 2012).

11. Order, *Bryanton*, No. 2:12-cv-14114 (E.D. Mich. May 29, 2013), D.E. 48.