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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

DEANA BEARD, as candidate for
the Third Circuit Court Judge, Regular Term,
Non-Incumbent Position in Wayne County and
In her Individual capacity,

Case: 2:20-cv-11067
Judge: Michelson, Laurie J.
MJ: Whalen, R. Steven
Filed: 04-03-2020 At 11:46 AM
CMP DEANA BEARD V GRETCHEN WHITMER ET AL (SS)

Plaintiff,

v.

GRETCHEN WHITMER, Governor of Michigan,
JOCELYN BENSON, Secretary of State of Michigan,
And JONATHAN BRATER, Director of the Michigan
Bureau of Elections, in their official capacities,

Defendants, joint and severable.

COMPLAINT FOR DECLARATORY AND INJUNCTION RELIEF

NOW COMES, Plaintiff, Deana Beard, as an individual registered voter in Michigan and as candidate for the Third Circuit Court Judge, Regular Term, Non-Incumbent Position in Wayne County files the above caption against the above-named Defendants, and states as follows:

Summary of the Civil Action

Governor Whitmer's **Executive Order 2020-21 (Covid-19)(Stay Home/Shelter in Place)** (Exhibit A) is in **direct conflict with** and **violates** Candidates and Individuals **Constitutional Rights**, namely the First and Fourteenth Amendments. The Order completely **denies the Candidates the ability to obtain statutory** (MCL 168.544f) (Exhibit B) **required signatures** to get on the ballot and denies individual's the **right to vote** for candidates that **but for**, said **Executive Order** would have been on the ballot and obtained the statutory required signatures, thus allowing voters to decide. **To date**, the Secretary of State (hereinafter "SOS") and the Board

of Elections (hereinafter “BOE”) is still **steadfast in maintaining the filing requirements** for Candidates (Exhibit C) and said requirements will remain in place (Exhibit D and E) including the number of signatures. For **Judicial candidates** in Wayne County the **minimum signatures are 4000** and maximum of 8000. (Exhibit C, page 3)

Count 1 -General Allegations

1. Deana Beard (hereinafter referred to as “Ms. Beard”) is a candidate running for a Non-Incumbent Judicial position in the 3Rd Circuit Court for Wayne County.
2. The First Amendment and the Fourteenth Amendments of the United States Constitution guarantees Ms. Beard’s right to run for said position and the people to vote for whom they wish.
3. To run for said position, one must fulfill certain filing requirements and submissions to the SOS of Michigan and/or the BOE. (Exhibit C)
4. To date, Ms. Beard has complied with all the current requirements for running for said position.
5. Ms. Beard created her Committee on 2/27/2020 and filed her “Statement of Organization” on March 3, 2020.
6. Ms. Beard is currently an attorney.
7. Pursuant to the Michigan election law, candidates are **required to file** nominating petitions with the Michigan SOS office **by April 21, 2020**, no later.
8. It should be noted that the filing of said **nominating petition is a ONE-TIME filing**. The candidates cannot file multiple times. General terms, it is a one and done submission.
9. **To date, NO extensions** have been granted for the nominating petition signatures.
(Exhibit D)

10. The **required signatures** (valid registered voters in **Wayne County**) on the nominating petition for the position Ms. Beard is running for is **4000 minimum and 8000 maximum signatures** to be placed on the ballot. (Exhibit B & C)
11. Due to Wayne Counties high population, the requirement is one of the, if not the highest, signature quota in the State of Michigan. (Exhibit B & C)
12. Ms. Beard (herself) and volunteers have been diligently and relentlessly collecting signatures to comply with these signature requirements.
13. Pursuant to Ms. Beard's projections and plans based on the cumulation already accomplished, she was and would have meet the statutory requirements for signatures.
14. But for, Governor Whitmer's March 24, 2020 Executive Order No-. 2020-21 (the "stay-home/shelter-in-place Order")(Exhibit A) the SOS and BOE's stead-fast position of strict compliance of all requirements will stand (Exhibit D), Ms. Beard was not able to obtain said signatures. Nor does Ms. Beard have the ability to obtain signatures by the deadline without violating said Order, i.e. breaking the law.
15. Not only has this Executive Order infringed on her Constitutional rights, the Order denies the right to get signatures and the individuals the right to vote for whom they decide.
16. **It should be pointed out** that not only is this a personal issue for Ms. Beard but **this is a Statewide problem for all candidates of all positions that require signatures to get on the ballot.**
17. This Honorable Court is clearly aware of the requirements of the Executive Order for residents to shelter in place by staying home, no public gatherings, social distancing, essential personal is deemed to travel and only essential needs can be meet by nonessential residents.

18. The problem is not as simple as deeming candidates to essential person status. The problem is simple, people have been told not to have contact with people. To obtain signatures candidates are violating the social distancing and public safety issues. Going door to door is not an option. Standing outside hospitals, grocery stores and the like, is not practical when people will not approach candidates, take their pen and sign a petition, which violates the Executive Order.
19. Mailing is not viable option and financially burdensome on candidates. Statistically, only 1% respond to mailers under normal circumstances. In this unprecedented times, people do not want to even touch their mail, let alone respond to political/nonpolitical mail. Not to mention, there is talk of closing the post office for a period of time to clean, etc. Lastly, the cost alone for a judicial candidate to do mailing in Wayne County is \$250,000 to reach a fraction of the population. Note: Judicial candidates obtain very little funding due to their nonpartisan position. Not to mention, where can you fundraise with the Executive Order set in place?
20. Social media again is not viable due to the requirement of physical signatures on specific petitions. Not to mention the potential for voter fraud.
21. There is **another issue** not raised, the **filing date is April 21, 2020 by 4 pm**. Candidates shall file all required signatures and other documents with the SOS. The **SOS is closed until April 23, 2020**. (Exhibit E) Even if Candidates had the required signatures, they cannot submit them on April 21, 2020 due to the SOS closure.
22. There are two potential options for candidates that require signatures (Congress, Senators and Judges) which are extension of time and/or decreased required number of signatures.

23. Extension to file signatures and required documents is, at this time and at best, a speculation. No one knows how long this Order will remain in effect. Governor Whitmer has already requested another 70 days to enforce the Executive Order. As it stands now, it is April 13, 2020, which gives candidates 8 days to obtain more signatures. However, this is a moot effort since, as mentioned above, the SOS is closed until April 23, 2020.
24. Even if the SOS opened for the petition submission. Eight days violates the number of days the BOE allows for candidates to obtain signatures and President Trump's social distancing guidelines, in effect until April 30, 2020.
25. The extension of time/make up days the Executive Order would be 28 days. The problem becomes when will the 28 days start. Not one person can answer when it will be safe to return to normal activity. This is a moment by moment unprecedented situation.
26. Lastly, the other option is decreasing the required number of submission (also allowing the SOS to open and take said petitions and filing documents from candidates on April 21, 2020). What is a fair decrease for signatures that could have been obtained in 28 days? Should we follow New York Legislation (Bill A.2570/S.2862) that decreased the number required by 25%?
27. No one knows how long a Shelter in Place/Stay at Home for Michigan residents will last. What we do know is that when it returns to normal, people will still hesitate to sign petitions and/or come close to others for a period of time, it is simply human nature. In fact, the May 2020 elections will not be conducted in person but by mail for this very reason (public safety). Additionally, Everyone is predicting an extension of shelter in place beyond May, especially in light of the school year closures Order by Governor Whitmer.

28. The bottom line is that there are many candidates that would have obtained their signatures but for the Executive Order and the SOS/BOE's insistence on keeping the requirements in place. This creates a direct conflict, violates civil rights and goes against our historical treatment of voting (i.e. allowing the people to decide). At best, if things remain the same, the Governor will be appointing many judicial positions across the State. Positions the people should have the right to vote on.
29. Ms. Beard seeks declaratory relief and injunctive relief as necessary to ensure her placement on Michigan's August 4, 2020 primary ballot. In support of this Complaint, Ms. Beard submits her Declaration. (Exhibit F)

Count 2 -The Parties, Jurisdiction, and Venue

30. Ms. Beard is a resident of Michigan in Wayne County and files her Complaint in her capacity as candidate for the Third Circuit Court Judge, Regular Term, Non-Incumbent Position in Wayne County and a registered voter in the Michigan.
31. Ms. Beard has complied with all the filing requirements of the SOS/BOE for this position, to date.
32. Ms. Beard has consistently voted in primary and general elections for the past 32 years.
33. Defendant Gretchen Whitmer is the Michigan Governor. Governor Whitmer has authority over the enforcement of Michigan Election Code during a State of Emergency, which Michigan is currently under. Governor Whitmer's official office address is P.O. Box 15282 Lansing, MI 48901.
34. Defendant Jocelyn Benson is the Michigan Secretary of State. Secretary Benson is the State's Chief Executive Official and has ultimate authority over the enforcement of the

Michigan Election Code, including the provisions challenges within this Complaint.

Secretary Benson's official office address is 430 Allegan, Lansing, MI 48933.

35. Defendant Jonathan Brater is the Director of the Michigan Bureau of Elections. Director Brater accepts and reviews candidate petition filings, assists county and local elections officials with their administrative duties and administers the State's electoral process and Campaign Finance Act. Director Brater's official office address is Bureau of Elections, 430 W. Allegan, Lansing, Mi 48933.

36. Ms. Beard is only asserting her claims against all Defendants in the Defendant's official capacities. Ms. Beard is NOT asserting any of her claims against any Defendant individually.

37. Venue is proper in this Court because Ms. Beard is a resident of Michigan, and because the Defendant's are state officials who maintain offices throughout the State of Michigan. See *Bay County Democratic Party v. Land*, 340 F. Supp. 2d 802 (E.D. Mich. 2004)

38. This court has personal jurisdiction over the Defendants because they are public officials of the State of Michigan, additionally they are residents of Michigan.

39. This court has proper venue for this civil action under 28 U.S.C. 1391.

40. This court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §1331. Ms. Beard's claims arise under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983.

41. Declaratory and injunctive relief is authorized by 28 U.S.C. §2201 and §2202, Additionally, under Rule 65 of the Federal Rules of Civil Procedure.

Count 3 – Violation of the First and Fourteenth Amendment of the Constitution

42. Ms. Beard hereby incorporates by reference 1-41.

43. Ms. Beard has hired campaign staff. She has diligently campaigned and obtained signatures. Pursuant to her current plan, past accumulation of signatures and due diligence she would have gotten her required signatures, thereby placing her on the ballot. Ms. Beard due to her campaign strategies. Number of signatures to date, experience as an attorney and plan demonstrated her potential to win the general election in November 2020.
44. President Trump on March 15, 2020 initiated the social distance guidelines to slow the spread of Covid-19. This included a social distancing of six feet for others. This created somewhat of an obstacle for the candidates to obtain signatures.
45. On March 24, 2020 Governor Whitmer enacted the Executive Order to shelter in place/stay at home until April 13, 2020, which it is believed will be extended. This broadly construed Executive Order makes it a criminal charge (misdemeanor) with a potential fine of \$500.00. (Exhibit A) Additionally, the Order orders people to maintain 6 feet social distancing. There is no exception for candidates under this Order.
46. To comply the Order, protect citizens and her staff/herself. Ms. Beard's campaign is on hold and all collection of signatures is being postponed until further notice or instruction.
47. Ms. Beard inquired with the SOS as to the statutory signatures (Exhibit B & C) and how they are going to proceed. She was told all information will be posted online. To date, the SOS has remained steadfast in their strict compliance with the statutory and filing requirements. (Exhibit D). This was printed 4/2/2020.
48. Governor Whitmer, SOS and BOE's lack of attention to this extremely relevant and prevalent issue is negligent, at best.

49. Governor Whitmer, SOS and BOE cannot possibly deny or ignore the severe consequences and detrimental outcome of their strict compliance of the filing deadlines and statutory requirements. In this case, it means that numerous people who would have made the requirements to get on the ballot will not be on the ballot. Is this willful and purposeful intent by the Governor, who will be allowed to appoint judges to the bench? Ms. Beard hopes this is not the case. But we cannot deny this will be the outcome.
50. Governor Whitmer has made several accommodations for people who will be affected by her Order. However, she refuses to allow for any accommodations, alterations, and/or delays for candidates who require signatures to get on the ballot. This willful and purposeful exclusion is a direct violation of the First and Fourteenth Amendment of the Constitution.
51. Governor Whitmer, SOS and BOE have made several accommodations in their application of the Order, i.e. closed offices, social distances, etc. However, their arbitrary application of the filing requirements for candidates is where they are purposely and willfully refusing to do anything but let the filing requirements stand. Their flippin disregard regarding this serious violation of the Constitutional Amendments is going to have long lasting effects for the votes of Michigan and the candidates running.
52. Governor Whitmer, SOS and BOE's purposefully and willful disregard of this very serious issue has left candidates scratching their heads and wondering how to proceed. They clearly cannot submit required documents on April 21, 2020 because the offices are closed. The offices are scheduled to open April 23, 2020. When they open, if the candidate files the paperwork, it will be rejected under this strict compliance stance they

are taking. The bottom line and effect is that if the candidates have not already submitted the required documents, they will not be on the ballot.

53. When this Order was enacted, the candidates had 28 days to comply with the filing requirements. This is a lot of time. Now, this deadline cannot be met due to closure of the SOS.
54. Historically, candidates submit in April (close to the date of deadline), especially judges due to the voluminous requirement of signatures.
55. Not one person, let alone candidates, could have seen this coming and the extent it would affect their campaigns.
56. Governor Whitmer, SOS and BOE are denying voters the right to choose their elected official by their strict application of the statutory and filing requirements.
57. Governor Whitmer, SOS and BOE have absolutely NO compelling or legitimate state interest in their strict compliance of this filing and statutory requirements. The only compelling interest, as it relates to judges, is that she will have numerous positions to appoint.
58. While the candidates, including Ms. Beard, are complying with the Order, the severity of and duration of measures to conquer this pandemic is unknown at this time. This puts candidates in a no-win situation.
59. Governor Whitmer, SOS and BOE all know the importance of these requirements, the effect of it and the unprecedented circumstances that will and have affected campaigns. Yet, they have willful and purposely ignored repeated requests for answers and fair solutions to this situation. TO DATE, their position is to keep unfair, unreasonable and unrealistic expectations of the candidates. They know that a month of diligent efforts by

candidates can and would have yielded fulfillment of the requirements, instead candidates were cut off at the knees when the Order was put into effect.

60. Candidates put their heart and soul into these campaigns to affect their efforts to get elected. Their lack of compassion, fairness and arbitrary application is a complete disregard of their strict oath of office and to the Constitution. Not to mention, the attitude of sorry for your loss, too bad for you and we don't care is a slap in the face of the Constitution, which should not go unrecognized or resolved.
61. Obtaining signatures is extremely time consuming, not to mention, tenuous under ideal circumstances and requires close contact. Governor Whitmer, SOS and BOE have made it impossible to obtain signatures. They offer no alternative for candidates. Candidates cannot meet the deadline with the Order in place. Effectively leaving numerous candidates off the ballot for votes to decide.
62. Not to mention, the judicial requirements are extremely high. Congressional and Senate requires 1000 signatures. Wayne County requires 4000 valid signatures. Statistically ten percent (10%) or more collected are rejected and/or challenged. Thus, the minimum is not 4000, it is more like 5000. This takes enormous amount of time to collect. This needs to be taken into account.
63. Candidates are given a timeframe to collect signatures. They rely on that timeframe when they make their strategic collection of signatures. The Governor, SOS and BOE have denied the timeframe for collection. They knowingly shortened it by 28 days pursuant to an Order that make it a crime to get signatures and leaves numerous candidates short of the requirement.

64. The Governor, SOS and BOE have created an unconstitutional violation because it imposes the requirement of signatures after knowingly shorting the detrimentally relied time to meet the signature requirements and then willfully and purposely refusing under these unprecedented times to make alterations. The effect is they strip the candidate of their ability to obtain and meet the requirements, deny their ability to be on the ballot, and deny individuals the right to choose their candidate.
65. The candidates also suffer financial hardship. They expend countless hours and resources running campaigns, one resources is capital. Not to mention, the cost of filing lawsuits to invoke and protect their Constitutional rights.
66. Additionally, if the Court or the Governor decides that signatures can somehow be obtained via a mail campaign, this will create enormous financial restraints that are not realistic and yield low to no results. The effect of the mail campaign is essential the same as the current position (do nothing) of the Governor, SOS and BOE.
67. The Governor, SOS and BOE knows that if candidates do not meet the signature requirements their run of office is over – period. This is a severe and unnecessary outcome for candidates in a situation they had no control over or created.
68. As an individual register voter Ms. Beard's rights and all registered voters right to vote for their candidate in Michigan will have been denied. This is a clear Constitutional violation of their right to choose their candidate, namely Ms. Beard.
69. The Governor, SOS and BOE's enforcement of the deadline will leave voters to vote from someone they did not want to pick or not vote at all. The worst-case scenario is that no judicial candidate will reach the minimum requirement of 4000 signatures and the box

will be empty, thereby allowing the Governor to step in the shoes of voters and appoint judges to fill the positions.

70. The Governor, SOS and BOE with their willful and purposeful enforcement of the deadline denies the people of Michigan, including Ms. Beard, freedom of speech and association, equal protection and due process guaranteed by the Constitution as enforced by 42 U.S.C §1983.

71. Under the circumstances, these requirements are unrealistic, burdensome, unreasonable, and are not narrowly tailored to meet any compelling or legitimate state interest or the interest of the people.

72. Ms. Beard has been voting for 32 years. She takes her right to vote seriously.

73. This arbitrary application of strict compliance of and clear violation of Constitutional rights excludes candidates from the ballot that would otherwise be on the ballot, thereby, infringing on voters right to choose.

74. These violations immediately injure Ms. Beard and will continue to do so in the future in the absence of relief.

75. These violations will injure voter's right to vote in the future absence of relief.

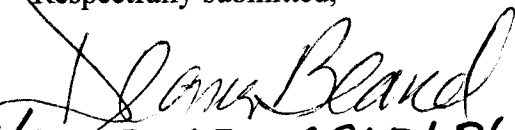
Prayer for Relief

WHEREFORE, Ms. Beard respectfully requests this Honorable Court enter a Judgment in her favor and against Defendants and grant the following relief:

- A. Enter a Declaratory Judgment holding the MCL 164.544f is unconstitutional as applied to Ms. Beard in her capacity as a candidate for Third Circuit Court.

- B. Enter a Temporary restraining order and/or preliminary injunction, and permanent injunction, barring Defendants from enforcing the filing deadline and/or filing requirements.
- C. Enter an Order requiring Defendants to either extend the deadline and/or decrease the signature requirements, or place Ms. Beard's name on the ballot upon filing the nominating petitions with fewer than required number of signatures and other documents required on 4/21/20.
- D. Award attorney fees pursuant to 42 U.S.C. §1988 and
- E. Award such relief as this Court deems necessary, reasonable, just and proper.

Respectfully submitted,


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Dated: April 2, 2020