

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

SAWARIMEDIA LLC, DEBORAH PARKER,  
JUDY KELLOGG, and PAUL ELY,

Plaintiffs,

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.

Civil Action No.

Hon.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

SawariMedia LLC, Deborah Parker, Judy Kellogg, and Paul Ely (collectively "Plaintiffs"), in their capacities as the sponsor of a statewide ballot initiative, and/or in their capacities as registered voters in Michigan, files this Complaint against Defendants 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 (collectively "Defendants").

Summary of this Civil Action

1. The Plaintiffs allege that Michigan's ballot access procedure in combination with Governor Whitmer's March 24, 2020 Executive Order No. 2020-21 (the "Stay-home Order"), violates rights guaranteed to each of them by the First and Fourteenth Amendments of the United States Constitution. Plaintiffs also allege that the Defendants' refusal to unilaterally apply this Court's April 20, 2020, Order related to candidate petitions, to all ballot petitions, is a violation of the equal

protection of the law clause of the Fourteenth Amendment of the United States Constitution.

2. Plaintiff SawariMedia LLC ("SawariMedia") is a political and criminal justice reform advocacy organization that sponsored a ballot initiative petition that was filed with the Michigan Secretary of State on January 16, 2020, as required by MCL § 168.483(a).

3. Pursuant to Michigan election law, to have a ballot initiative appear on the official general ballot in November, 2020, proponents of the initiative are required to file with the Michigan Secretary of State's office by May 27, 2020, (the "Filing Deadline" or "Deadline"), three hundred forty thousand and forty-seven (340,047) signatures of qualified and registered electors residing in the state of Michigan.

4. Pursuant to Governor Whitmer's Stay-home Order, which has now been extended, and in light of a global pandemic, Michigan residents are required to stay in their homes until at least May 15, 2020. All public gatherings are prohibited. Additionally, workers who are deemed essential and permitted to leave their homes must maintain a distance of six feet from other people.

5. SawariMedia, it's staff, and hundreds of volunteers were diligently collecting signatures prior to the issuance of the Stay-home Order. Although SawariMedia has collected a substantial number of signatures from qualified and registered electors, they have not yet obtained enough signatures to meet the statutory threshold to have the initiative placed on the November 3, 2020 general ballot.

6. Plaintiffs Deborah Parker ("Parker"), Judy Kellogg ("Kellogg") and Paul Ely ("Ely"), have all contacted SawariMedia to voice their support for the initiative, and to advise SawariMedia that had the Stay-home Order not been issued, they would have each visited a location to sign the petition.

7. Through the enforcement of Michigan law in conjunction with the Stay-home Order, Defendants have effectively precluded SawariMedia and other similarly situated organizations throughout the state from qualifying to have their ballot initiatives on the November 3, 2020 general ballot.

8. The actions of the Defendants have effectively precluded an unknown number of qualified and registered Michigan electors from having their signatures counted toward a ballot initiative they wish to vote on during the November, 2020 election.

9. Defendants have indicated that the current filing deadline on May 27, 2020 will be strictly enforced, notwithstanding that this Court has recently issued an Order extending the deadline, allowing the use of electronic signatures, and reducing the number of signatures required by fifty percent, for political and judicial candidates who were collecting signatures to secure the placement of their names on the August 4, 2020 primary ballot.

10. Defendants' refusal to apply the new rules governing candidate petitions, to initiative petitions, places organizations and individuals like the Plaintiff's in the position of either having to break the law and cause other electors to break the law under threat of criminal/civil prosecution, or forgo exercising their constitutional rights altogether.

11. Plaintiffs seek prospective declaratory relief and injunctive relief as necessary to ensure their initiative's placement on the November 3, 2020 general ballot. In support of this Complaint, the Plaintiffs submit their Declaration (Exhibit A).

#### The Parties, Jurisdiction, and Venue

12. Plaintiff SawariMedia, is a legally formed corporation in the State of Michigan, that has formed a coalition of like-minded, qualified, registered voters. SawariMedia sponsored the ballot initiative petition that was filed with the

Michigan Secretary of State on January 16, 2020. SawariMedia was founded by Amani Sawari, who oversees and manages the initiative campaign. Amani Sawari is a registered voter in Michigan, who has consistently voted in past primary and general elections. SawariMedia resides in Detroit, Michigan.

13. Plaintiff Parker resides in Michigan and files suit in her capacity as a registered voter in Michigan. Parker is a registered voter in St. Clair Shores, Michigan, and has consistently signed ballot initiative petitions in the past, and has also consistently voted in past primary and general elections.

14. Plaintiff Kellogg resides in Michigan and files suit in her capacity as a registered voter in Michigan. Kellogg is a registered voter in Owosso, Michigan, and has consistently signed ballot initiative petitions in the past, and has also consistently voted in past primary and general elections.

15. Plaintiff Ely resides in Michigan and files suit in his capacity as a registered voter in Michigan. Ely is a registered voter in Buchanan, Michigan, and has consistently signed ballot initiative petitions in the past, and has also consistently voted in past primary and general elections.

16. Defendant Gretchen Whitmer is the Michigan Governor. Governor Whitmer has authority over the enforcement of the Michigan Election Code during a state of emergency and otherwise. The Plaintiffs assert claims against Governor Whitmer in her official capacity. Governor Whitmer's official address is P.O. Box 15282, Lansing, MI 48901.

17. Defendant Jocelyn Benson is the Michigan Secretary of State. Secretary Benson is the State's chief elections official and has ultimate authority over the enforcement of the Michigan Election Code, including the provisions challenged herein. The Plaintiffs assert their claims against Secretary Benson in her official capacity only. Secretary Benson's official address is 430 W. Allegan, Lansing, Michigan 48933.

18. Defendant Jonathan Brater is the Director of the Michigan Bureau of Elections. Director Brater accepts and reviews initiative petition filings, assists county and local election officials with their administrative duties, and administers the State's electoral process and Campaign Finance Act. The Plaintiffs assert their claims against Director Brater in his official capacity only. Director Brater's official address is Bureau of Elections, 430 W. Allegan, Lansing, Michigan 48933.

19. Venue is proper because the Plaintiffs are residents of Michigan, and because the Defendants 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). This Court has personal jurisdiction over the Defendants because they are public officials of the State of Michigan and they are residents of Michigan. This Court is a proper venue for civil action under 42 U.S.C. § 1983.

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

### General Allegations

21. SawariMedia is a coalition of like-minded, qualified, registered voters in Michigan, who have dedicated their time, money, and other resources, to advance the coalitions ballot initiative petition.

22. On January 16, 2020, SawariMedia filed it's ballot initiative petition with the Secretary of State.

23. SawariMedia has hired a campaign staff and has been diligently campaigning since the summer of 2019. SawariMedia has created a website devoted to the ballot initiative petition, has moderated several town-hall meetings focussed on the initiative, and has hosted several training seminars for the the individuals who had volunteered to canvass the petition across the state to collect the required number

of signatures.

24. Pursuant to Michigan election law, to appear on the official general ballot, proponents of the initiative are required to file with the Michigan Secretary of State's office by May 27, 2020, at least three hundred forty thousand and forty-seven (340,047) signatures of qualified and registered electors residing in the state of Michigan. See M.C.L. 168.471.

25. SawariMedia and its campaign team implemented a plan to collect the required number of signatures early in the campaign. This plan included multiple "pop-up" and "pick-up and drop-off" locations across the state, where qualified, and registered electors could visit to sign the petition, as well as pick up copies of the petition to circulate amongst their own networks.

26. SawariMedia, its campaign team, and several hundred volunteers and supporters have been working diligently, and have already collected approximately two hundred fifteen thousand (215,000) valid signatures.

27. On or around March 15, 2020, President Trump rolled out his "15 days to slow the spread" initiative (the 'Initiative'). This Initiative, which was ultimately extended to April 30, 2020, asked people to practice social distancing and take other measures to prevent the spread of the novel SARS-CoV-2 virus ("Covid-19").

28. To comply with this Initiative and protect Michigan's citizens, SawariMedia and its campaign postponed many of its efforts to collect signatures.

29. On March 23, 2020, in response to the unprecedented Covid-19 pandemic, which has disrupted nearly every aspect of American life, Governor Whitmer issued Executive Order 2022-21 (the "Stay-home Order" or the "Order") (Exhibit B), which has now been extended until May 15, 2020.

30. Based on information and belief, the Order will likely be renewed and extended for weeks, and more importantly, beyond the May 27 Deadline

31. Whitmer's Stay-home Order is to be construed broadly. The Order makes it a civil infraction for a person to leave his or her home or residence unless that person is a worker "necessary to sustain or protect life or to conduct minimum basic operations" ("Essential Worker").

32. The Stay-home Order further requires that Essential Workers who leave their homes must maintain social distancing standards by remaining at least six feet away from others.

33. The Stay-home Order does not create an exception for ballot initiative campaign staff, and even if an exception was created, it would still be impossible for petition circulators to visit homes and public facilities to collect signatures from supporters and other electors without causing those individuals to violate the Order.

34. On or around March 24, 2020, staff from the Michigan Secretary of State informed SawariMedia that there would be no changes to the original deadline and number of signatures required for placing the initiative on the November 3, 2020 general ballot.

35. On April 15, 2020, another member of SawariMedia's staff received an email from the Bureau of Elections that stated "As of now nothing has changed. Updates will be posted on our website at [www.Michigan.gov/Elections](http://www.Michigan.gov/Elections)." The email came from [elections@michigan.gov](mailto:elections@michigan.gov)

36. The refusal of the Defendants to accommodate the hurdles created by the pandemic and the Stay-home Order resulted in a civil action being filed by a political candidate who faced the same challenges the Plaintiffs in this case are now facing. The Court in that case decided on behalf of the Plaintiff, and issued an Order to extend the filing deadline, to allow the use of electronic signatures, and to reduce the number of required signatures by fifty percent (50%). See 2:20-cv-10831-TGB-EAS *Esshaki v. Whitmer et al.*



37. Although the deadlines and number of signatures required are different, the signatures for ballot initiative petitions and candidate ballot petitions are collected in the same exact manner. Yet, the Defendants refuse to apply the Court's April 20, 2020 decision to initiative petitions.

38. The Defendants' enforcement of the deadline and number of signatures required is inconsistent with other actions the Secretary of State has taken in these unprecedented times. The Secretary of State offices are closed, and because the closure of the offices are linked to the Stay-home Order, they are not expected to reopen until May 15, 2020, at the earliest. Additionally, the Secretary of State has indicated that it will conduct local elections in May 2020 through mail ballots, not in person.

39. Similarly, on March 25, 2020, recognizing the severity of this pandemic, Governor Whitmer issued Executive Order 2020-22, extending the canvassing deadline of the state's primary election to April 24, 2020.

40. These extraordinary measures underscore the challenges we face as a state and nation during this pandemic. There is, under these unprecedented circumstances, absolutely no compelling or legitimate state interest to enforce the Filing Deadline and signature requirement, and to do so is unconstitutional.

41. Collecting signatures is a time-consuming process, which requires close contact with electors who reside in the state.

42. Governor Whitmer's Stay-home Order has made it impossible to collect the required number of elector signatures by May 27, 2020, the deadline imposed under M.C.L. § 168.471.

43. The enforcement of that Deadline under these unprecedented circumstances, considering the Stay-home Order, is unconstitutional because it imposes signature requirements upon the Plaintiffs, and simultaneously strips them of the ability to meet those requirements.



44. This effectively prevents the Plaintiffs, through no fault of their own, from getting their proposed ballot initiative on the ballot.

45. Over the last several months, SawariMedia and its staff has expended countless hours and other resources campaigning for the proposed ballot initiative. The enforcement of the Deadline and signature requirement severely injures SawariMedia and its supporters, and continues to impose severe burdens on them because if it is enforced, the thousands of Michigan electors who have signed the petition, and the thousands more who wish to sign the petition, will not be able to make their signatures count, and to make their voices heard in the 2020 general election.

46. Although SawariMedia has resorted to mailing copies of the petition to thousands of electors who have requested it (Exhibit D), not only is it cost prohibitive, but the US Postal Service is running several weeks behind on the processing of mail across Michigan.

47. The Plaintiffs, as well as the thousands of supporters across Michigan who support the ballot initiative, will be further injured and will suffer irreparable harm to their voting, speech, and associational rights because they will not be able to vote for an issue they wanted to make their voices heard on.

48. Defendants' refusal to apply the same rules to ballot initiative petitions that were ordered to be applied to candidate petitions, will deny voters, including the Plaintiffs, with the opportunity to vote on an issue they worked diligently to get on the ballot. The Defendant's actions will serve to subvert our constitutional democracy by arbitrarily restricting Michigan electors right to support and vote for an initiative they choose to support.

COUNT I - VIOLATION OF FIRST AND FOURTEENTH

AMENDMENT RIGHTS

(M.C.L. § 168.471 is unconstitutional as applied to SawariMedia as the sponsor of a ballot initiative)

49. The preceding Paragraphs 1 - 48 are hereby incorporated by reference.

50. Considering the existence of an unprecedented viral pandemic and Governor Whitmer's Stay-home Order, the application and enforcement of M.C.L. § 168.471 is unconstitutional as applied to SawariMedia because the enforcement of the statute would require SawariMedia to collect three hundred forty thousand and forty-seven (340,047) signatures by May 27, 2020, while simultaneously ordering SawariMedia, its staff and supporters, to not leave their homes.

51. Defendants' actions effectively prohibit SawariMedia from getting the required number of signatures, and in turn, prevent SawariMedia from having the ballot initiative placed on the November 3, 2020, general ballot, which violates SawariMedia's freedom of speech and association, equal protection, and due process rights as guaranteed by the First and Fourteenth Amendments, and as enforced by 42 U.S.C. § 1983.

52. Defendants' enforcement of the statutory requirements in conjunction with the Stay-home Order make it virtually impossible for SawariMedia to get its ballot initiative on the ballot without causing both SawariMedia's staff and the initiative's supporters to violate the Stay-home Order and face potential criminal or civil charges. Under the circumstances, these requirements are burdensome, unreasonable, and are not narrowly tailored to meet any compelling or legitimate state interest.

53. Moreover, the original requirements for political and judicial candidates seeking to secure placement on the ballot are no longer being enforced. Failure to

apply the same rules to ballot initiatives is unequal protection of the law.

54. These violations immediately injure SawariMedia and will continue to injure SawariMedia in the future in the absence of relief from this Court.

COUNT II - VIOLATION OF FIRST AND FOURTEENTH

AMENDMENT RIGHTS

(M.C.L. § 168.471 is unconstitutional as applied to all Plaintiffs as registered voters)

55. The preceding Paragraphs 1 - 54 are hereby incorporated by reference.

56. All Plaintiffs are registered voters. Each of them has consistently voted in past primary and general elections, and each of them have a constitutional right to have their signatures counted toward a ballot initiative, and to effectively cast their vote.

57. The unconstitutional exclusion of the initiative sponsored by SawariMedia through the unconstitutional enforcement of the Deadline and signature requirements deprive each of the Plaintiffs of an effective choice at the ballot on an issue they wish to vote on. It is wholly unreasonable, and fails to meet any compelling or legitimate state interest.

58. Defendants' enforcement of the Deadline and signature requirement hinder the Plaintiffs opportunity to make their voices heard at the ballot, which would otherwise exist.

59. Defendants' enforcement of the Deadline and signature requirement deprives the Plaintiffs of their constitutional right of having their signatures counted toward a ballot initiative proposal.

60. All Plaintiffs are immediately injured by these unconstitutional acts.

COUNT III - VIOLATION OF FOURTEENTH AMENDMENT RIGHT

(Refusal to apply this Court's previous Order in  
Esshaki v. Whitmer, et al., to the Plaintiffs is unconstitutional)

61. The preceding paragraphs 1 - 60 are hereby incorporated by reference.

62. All Plaintiffs are United States citizens, and registered voters, who have a constitutional right to the equal protection of the law.

63. On April 20, 2020, recognizing the unprecedented circumstances we now find ourselves in, this Court ruled that the Michigan election laws were to be changed to accommodate the extraordinary situation presented by the combination of the pandemic and Stay-home Order. See 2:20-cv-10831-TGB-EAS Esshaki v Whitmer et al.

64. Although the Plaintiffs in this case face the exact same circumstances as was faced by the Plaintiffs in Esshaki v. Whitmer, et al., the Defendants refuse to apply this Court's April 20, 2020, Order, to ballot initiative petitions that were being circulated at the time these undeniable hurdles were put in place.

65. All Plaintiffs are immediately injured by the Defendants' unconstitutional acts.

**Prayer for Relief**

WHEREFORE, Plaintiffs respectfully requests that this Honorable Court enter a judgment in their favor and against Defendants and grant the following relief:

A. Enter declaratory judgment holding that M.C.L. § 168.471 is unconstitutional as applied to SawariMedia in its capacity as a sponsor of a ballot initiative petition, and as applied to all Plaintiffs in their capacities as qualified voters;

B. Enter a temporary restraining order and/or preliminary injunction, and permanent injunction, barring Defendants from enforcing the Deadline and/or

signature requirements;

C. Enter an order requiring the Defendants to apply the same rules to ballot initiative petitions as was previously Ordered for candidate petitions;

D. Award costs pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1920; and

E. Award such other relief as the Court deems just and proper.

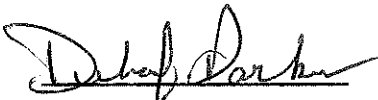
Respectfully Submitted,

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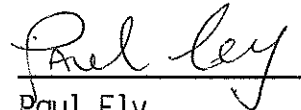
Dated: May 4, 2020



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CERTIFICATE OF SERVICE

THE UNDERSIGNED certifies that on the 4th day of May, 2020, the foregoing paper was filed with the Clerk of the Court by placing the same in an envelope with enough pre-paid first class postage to be delivered to Clerk of the Court, United States District Court, Eastern District of Michigan, 231 W. Lafayette Blvd., Detroit, MI 48202, and by placing that envelope in a US postal service collection box in Detroit, Michigan.

  
Amani Sawari