UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

ERIC ESSHAKI, as candidate for United States Congress and in his Individual capacity;
MATT SAVICH, as candidate for the Forty-Seventh District Court, Oakland County, Michigan and in his individual capacity;
DEANA BEARD, as candidate for The Third Circuit Court Judge, Regular Term, Non-Incumbent Position in Wayne County and in her individual capacity.

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, joint and severable.

Case No. 2:20-CV-10831-TGB

Hon. Terrence G. Berg

PLAINTIFF'S RESPONSE TO DEFENDANTS EMERGENY MOTION UNDER RULE 60(B) FOR LIMITED RELIEF FROM THE COURT'S ORDER GRANTING A PRELIMINARY INJUNCTION, OR ALTERNITIVELY FOR A STAY PENDING EMERGENCY APPEAL

NOW COMES, Deana Beard, for her response states as follows:

1. Admit in part that Mr. Esaki sought to enjoin the signature requirement the because Governor's Order during this pandemic made it impossible for him to meet the signature requirements by the deadline. He proposed a 40% reduction. The opinion clearly reflected other parties' circumstances/facts with the 50% reduction. Denied in part that Mr. Esshaki is the only party in this case. Since the last hearing, the court has added as

parties. The Court indicated on the record that others are similar situated, read their motions and used their motions in its ruling. The order as read does not, nor was it intended for only Mr. Esshaki admitted by the court in oral argument on 4/23/2020.

2. Neither admit nor deny. The opinion speaks for itself.
3. Neither admit nor deny. Mr. Esaki addressed this issue providing a logical and simple response to this allegation on the record.
4. Deny. Mr. Esshaki's facts are not the only facts considered in the ruling per the court. This case is about all candidates (evident by the joinder, interveners, and *amicus* briefs) and the effect of the Stay-at-home order on their ability to get signatures. The court stated it considered all the parties' motions and the *amicus* briefs when formulating the Court's opinion, which is obvious from the opinion and the relief granted. Mr. Esshaki has standing to request the relief sought and granted by the court. Defendants only have issue with the relief sought by Plaintiff (and in concurrence with other parties) a decrease in signatures. Ms. Beard and Mr. Savage requested the 50% reduction and detrimentally rely on it. Discussed further in brief.
5. Deny. Defendants have not met their burden for elimination of the signature requirement and/or stay. Discussed further in brief.
6. Admit time is of the essence. Deny that Defendants relief requested should be granted and/or is warranted.
7. Ms. Beard can only speak for herself and does not concur with their motion. This motion is simply an attempt at another bite of the apple. The arguments Defendant have argued in their motion are the same arguments in the Response and Oral Arguments at the last hearing. The only difference is they included case law. Thus, The Court's opinion shall

remain the same since it has already been argued and addressed in a concise, clear ruling which can be applied to all candidates. Discussed in the brief.

WHEREFORE, for the reasons stated in Ms. Beard's response and the brief, Defendants' motion and relief sought should be denied, is not warranted and nothing has changed to warrant a request for relief including Defendants arguments.

The Defendants have not met their burden for Stay of the Order regarding the 50% reduction in the required signatures on the nominating petition to file in the Court of Appeals. The Defendant's likelihood of success is unlikely given the arguments and what has previously been argued numerous times. Their irreparable harm (not specifically stated) does not outweigh the irreparable harm to the Plaintiff and candidate's Constitutional rights. The stay will harm others who have detrimentally relied on the ruling. There is no way the public's interest to have access to advance their political preference is being met by effectively eliminating candidates from the ballot that would have been on the ballot but for the Executive Order. By eliminating (only relief requested) the 50% reduction, the court will deny the public's interest. Therefore, the defendants Stay should be denied.

Respectfully submitted,

Deana Beard

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Dated: April 23, 2020

Certificate of Service

I hereby certify that on April 24, 2020, I electronically filed the documents with the Clerk of Courts using ECF system/email, which will provide electronic copies to counsel of record.

Respectfully submitted,

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PLAINTIFF'S BRIEF IN RESPONSE TO DEFENDANTS EMERGENY MOTION UNDER RULE 60(B) FOR LIMITED RELIEF FROM THE COURT'S ORDER GRANTING A PRELIMINARY INJUNCTION, OR ALTERNITIVELY FOR A STAY PENDING EMERGENCY APPEAL

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CONCISE STATEMENT OF ISSUES PRESENTED

1. Whether the Court's order granting preliminary injunctive relief should be amended to exclude the requirement that the signature thresholds be reduced by fifty percent.

2. Whether the portion of the Court's preliminary injunction ordering that signature requirements be reduced by fifty percent should be stayed pending the State Defendants' emergency appeal.

CONTROLLING AUTHORITY:

Mich. Comp. Laws § 168.544f Mich. Comp. Laws § 168.133

Coalition to Defend Affirmative Action v. Granholm, 473 F.3d 237 (6th Cir. 2006)

Mascio v. Pub. Emps. Ret. Sys. of Ohio, 160 F.3d 310 (6th Cir. 1998)

HDC, LLC v. City of Ann Arbor, 675 F.3d 608 (6th Cir. 2012)

Ex Parte Milligan, 71 U.S. 2 (1866)

Republican Nat'l Comm. v. Democratic Nat'l Comm., 2020 WL 1672707 at *1 (U.S., April 6, 2020)

INTRODUCTION AND PROCEDURAL HISTORY

The Defendant's request for relief is not warranted and they have not presented any new evidence. Defendants' have not met their burden to over come Fed. R. Civ. P. 60(b)(2). Nor have they meet their burden for Stay of the Order regarding the 50% reduction in the required signatures on the nominating petition.

Mr. Esshaki filed a Complaint seeking Declaratory Judgment regarding the signature requirement on nominating petitions alleging his Constitutional rights were being violated due to the Governor's Orders to Stay-at-home which were in direct conflict with his ability to obtain signatures without violating the law. Ms. Beard filed a substantially similar Complaint alleging the same issue. In addition, others have filed intervening motions and *amicus* briefs on the issue present. The Court has read the Defendants' Response and a hearing was conducted. During said hearing the Court indicated that others substantially situated as Mr. Esshaki were seeking to join/intervene in this case and/or filed *amicus* brief, which will be helpful in formulating his opinion on the issues presented. Since the hearing, the Court has accepted additional parties in this case and issued its opinion/ruling. In the opinion and on the record (4/23/2020) the Court indicated it DID NOT fashion its opinion, ruling and/or relief narrowly and only for Mr. Esshaki and took in account all joinder/intervening motions, *amicus* briefs and parties facts associated and relevant with the issue when it fashioned it is ruling. Defendants would have this Court and potentially the Court of Appeals believe otherwise.

Defendants filed a Response to Mr. Esshaki's Complaint/Motion and a hearing was conducted. They literally argued the same arguments presented in this Motion and in Oral

Arguments. The only difference is they added case law. This is merely a thin veiled attempt at another bite of the apple and use case law nor previously argued for the Court of Appeals.

Mr. Esshaki's filing on April 21, 2020 is not new evidence nor was it an attempt to conceal it. Candidates were required to obtain an appointment with the Bureau of Elections, which he did. Additionally, candidates can supplement the signatures until May 8, 2020. It was clear and he did not attempt to hide this fact that he was still attempting to obtain signatures during the pendency of this case, via. mail and volunteers since the last hearing (April 15,200). The fact that he alleged 700 signatures at the time of filing and ultimately submitted more is not new evidence, considering the fact, he was still gathering as mentioned. Additionally, Mr. Esshaki would not have known if he would have gotten more signatures at the time of filing or the hearing for that matter. There is no aha moment here. Mr. Esshaki still is not in a position that he would have been but for the Executive Order. Mr Esshaki would have and planned to submit 2000. Additionally, the signatures are not certified yet and the amount submit does not provide the standard cushion all candidates obtain in an election.

The Defendants assert the court's ruling is only based on Mr. Esshaki alone and had the Court known he submitted the bare bone minimum (maybe) on April 21, 2020 it would not have ruled as it had. This is an absolute stretch of the truth. Defendants are fully aware of the motions were accepted by the court and considered in the Court's opinion, which was stated on the record. This ignores allegations ignores the other parties and their facts in this case. No one reading the court's opinion would conclude it was narrowly tailored to Mr. Esshaki. In fact, the court specifically points out other parties in its opinion on page 3, footnote No 5.; page 6, footnote 7; and page 17 Ms. Beard's Motion for Joinder is quoted. Lastly, Defendants in their own Motion (page 9) acknowledge that other parties (now admitted into the case) have filed to

join/intervene and *amicus* briefs were filed. Yet, they want this Court to ignore the other parties and facts associated with those parties.

The other parties requested relief as well. Ms. Beard and Mr. Savich (evident by oral arguments on 4/23/2020) indicated the need for the 50% reduction and detrimentally relied on it. The court did consider the other parties' facts and relief in its decision because it reduced the signature amount by 50% and not the requested 40% by Mr. Esshaki.

STATEMENT OF FACTS

Ms. Beard filed her Statement of Candidacy accepted on March 3, 2020 to run for a judicial position in the 3rd Circuit Court for Wayne County. Since January (mid to late) Ms. Beard, herself, has been diligently and actively seeking signatures. Ms. Beard was unable to start collecting signatures pursuant to the Bureau of Elections indecisiveness regarding the use of a new petition (for judicial candidates only) to be released in January 2020. They also indicated no old petitions would be accepted. This shortened her time to collect signatures in half. When the social distancing orders were put in place, Ms. Beard had to work harder and longer hours to get signatures. After the Stay-At-Home Order she was unable to collect enough signatures to get her on the ballot without fear of criminal prosecution.

When she filed her Complaint (4/3/2020) she indicated on 3/23/2020, she had 3557 signatures. (Exhibit A – Declaratory Statement requested by the judge) The requirements for a judicial candidate in Wayne County are a minimum of 4000 signatures after a two-fold process pursuant to MCL 168.522 (10)(certifying valid signatures and challenges by candidates) to get on the ballot. ALL Candidates as a standard of practice and common sense strive for a 20% throw out (not valid signatures) and a cushion for challenges, thereby meeting the two-fold process. There is not ONE election in the State of Michigan where a candidate's signatures were not challenged. Here, Ms. Beard formed a campaign staff/team which implements plans and

strategies to achieve no less than 6500 to 8000 signatures. Ms. Beard collected signatures for 50 days and achieved 3557. This averages 71 a day. March 13, 2020 social distancing order was enacted and stay at home order on March 23,2020. Thus, taking in account the 2 orders and the average a day (would have been more because of the nicer weather) this would have put her at 6200 (not including large gatherings that were planned to be canvased), ultimately putting her on the ballet. On 4/20/20 (only appointment available) she filed all remaining requirements including 3610 signatures. Ms. Beard (as well as others) detrimentally relied on the court's 50% reduction. Including the 50% reduction and the two-fold process Ms. Beard may get on the ballot. Contrary to the math that Ms. Beard would have been on the ballet but for the Executive Orders.

Statutory Requirements

MCL 168.544f sets out the signature requirements for Judicial candidates. Ms. Beard as a judicial candidate in Wayne County is required a minimum 4000 signatures (after the two-fold process) to qualify for the ballot.

MCL 168.552 (10) the petitions and any challenges must be canvassed by the staff to determine the validity of the signatures and make a determination of the sufficiency of the nominating petitions.

ARGUMENT

1. **Whether the Court's order granting preliminary injunctive relief should be amended to exclude the requirement that the signature thresholds be reduced by fifty percent?**

Defendants are in reliance of Fed. R. Civ. P. 60(b)(2) and Rule.59(b) in their request for exclusion of the 50% reduced signature requirements based on allegations of newly discovered evidence that could not have been discovered. To do so, they must demonstrate due diligence in obtaining the information and the evidence is material, controlling and would have produced a

different result if presented before the original judgement. *HDC, LLC, v City of Ann Arbor*, 675 F. 3d 608 (6th Cir. 2012). The newly discovered evidence must have been unavailable. *Id.*

In oral arguments (4/15/2020) the court indicated it would take inconsideration all the motions and *amicus* briefs. ALL parties were aware (even cited in Defendants Motion) that others were seeking intervention/joinder. DEFENDANTS HAD NOTICE AND ACKNOWLEDGE THIS ISNT JUST ABOUT MR. ESSHAKI. The court admitted on the record (4/23/2020) it did not narrowly tailor it's opinion to Mr. Esshaki alone. Yet, Defendants want to argue only Mr. Esshaki's facts to throw out the reduced signature issued by the court.

Mr. Esshaki did not know, nor could he have known if anyone would have submitted more signatures when he filed his Complaint and at the subsequent hearing. On the record (4/23/2020) he only got 10 more himself staying within the guidelines of the Executive Order. Not to mention, he never claimed he was not attempting to get signatures, just the opposite was stated on the record (4/15/2020) This put Defendants on notice his numbers would probably/possibly be higher and thus not newly discovered evidence. On the record, he indicated because he had gotten press about the issues in this case people responded and sent him signatures. It is no surprise, volunteers submit signatures before the filing date, which is common practice in campaigns. The number submitted has always been the unknown in the equation as it is for all the candidates similarly situated.

There is no aha moments here. Mr. Esshaki never attempted to conceal his efforts. While is it true, Mr. Esshaki submitted more than 1000 signatures on 4/21/2020, we have no idea if they are valid and yet this is the basis for Defendants relief requested. He may not survive the two-fold process pursuant to MCL 168.522 (10). The Defendant further asserts that since Mr. Esshaki did not need it the reduction, then other candidates similarly situated do not either. Mr. Esshaki in

good faith asked for relief based on the information he had at the time anything else would have been speculation. It is now easy to argue in hindsight he would not have needed said relief.

For Defendants to prevail there must be new evidence that could not have been discovered. The parties, facts, and motions were considered by the court and have not changed. The fact Mr. Esshaki indicated his was still attempting to collect signatures and did obtain more is not new evidence. Even if the court entertains Mr. Esshaki's change in submission numbers alone and state it could have swayed his decision on the level of reduction if Mr. Esshaki was the only Plaintiff. The Defendants cannot ignore that other candidates, such as Ms. Beard, who need 1000s of signatures. The 50% reduction is needed by candidate like Ms. Beard and who detrimentally relied on it. Additionally, they cannot deny the court admits it took these parties into consideration when formulating its opinion, and not just Mr. Esshaki alone. Thus, Defendants attempt to narrowly apply the court's conclusions and opinion fails. It is obvious the court's ruling of a 50% reduction is fair and equitable under the circumstances. In fact, the court cited several other states (NY, FL, NJ, CT, DE, GA, HI, IN, etc.) that did similar reductions or changes. Thus, it is not far fetched that the court correctly concluded the appropriate reduction based on all the motions, information, facts, parties, arguments, defenses at the time this opinion was issued. More importantly the evidence prior to the opinion is material and controlling. Mr. Esshaki submission is not material or controlling as it relates to influencing the court's ruling, especially considering the above argument.

Defendants argument fails because the court did not just consider Mr. Esshaki's fact scenario. The court carefully considered all parties to this statewide problem. He correctly applied it as a statewide candidate's problem. It is highly unlikely that the court, now knowing, that Mr. Esshaki's submitted over 1000 signatures would reverse his opinion and/or produce a

different result, especially considering the court's admissions the opinion was not just for Mr. Esshaki.

Defendants arguments under Fed. R. Civ. P. 60(b)(2) and Rule.59(b) fail. There is no substantial change to all the candidates position since the opinion was issued. The court did not just consider Mr. Esshaki alone. Even to date, other candidates on the record have indicated the need for the 50% reduction, specifically Ms. Beard and Mr. Savich oral arguments.

The other argument Defendant attempted to argue under these rules is the use of mail and/or electronic filing as a better option to obtain signatures than a 50% reduction. Please note, these are the exact same arguments they made before. Again, the Defendants attempt to focus on only one candidate as a basis for dismissal while the court acknowledges it used others to determine the correct 50% reduction. The Defendants now suggest the burden for all candidates has shifted because Mr. Esshaki submitted over 1000 signatures. Thus, the burden is no longer a severe burden. Again, this fails. Ms. Beard alone needs 1000s of signatures, not 100s. Mailing is outdated, ineffective and cost prohibitive on a normal basis, let alone a pandemic. If she spent the money required to do mailing, she essentially is off the ballot because she has no funding to campaign with later.

Ms. Beard cannot use electronic signatures either. She struggled to get over 100 signatures a day with face to face interaction. Now, the Defendants think that opening a Facebook account will magically summons 1000s of people to come and submit electronic signatures willing in two weeks. Most people cannot, at this time see beyond their own problems (health and money) during this pandemic. Yet, the Defendants claim on one hand it is "do able" but then indicated on the other it is not proven to be effective. The submission for electronic signatures is not a simple task. You must forward the PDF, print it out, fill it out correctly, fill out the circulator correctly,

scan or take a picture and send it back to the candidate for submission. We cannot even get people standing in front of us to fill out the petition correctly, but we are to leave them to their own devise to figure it out (only after they become a willing participate). There is also the assumption that they have the ability, tools/equipment and skill set to do all this in two weeks. Ms. Beard will need 200 a day to pass the two-fold process, which she would have but for the Executive Order. The Defendants would have this court believe that untested unprecedented means of collecting signatures will yield the results candidates need if they simply open a Facebook account and follow the steps to get electronic signatures. Defendants say the candidates should rely on this system is ridiculous.

The severity of the burden has not changed for all candidates affected by the Executive Order. There is no real new material and controlling evidence submitted to change the court's opinion. The Defendants argument fails because they refuse to accept this is not a ONE- person problem. The problem is a statewide candidate problem.

These are literally the same arguments in their response and made on oral argument. The argument should be denied for relitigating it and barred from a second bite at the apple. The Defendants are attempting an end-run around what they should have cited before and thus would have been able to use in the Court of Appeals and now are attempting to argue it with this thinly veiled attempt to weakly arguing for different relief by only using Mr. Esshaki as the basis while ignoring the clear evidence the court has already relied in to formulate his opinion. Thereby, the Defendants can now use the case law in the Court of Appeals.

Defendant knowingly makes false assertions to this court. They received Ms. Beard's Complaint and Motion for Joinder, in which she asks for injunctive relief.

It is interesting that on one hand the Defendant asserts that the candidates should need only a bare minimum (if at all) reduction because like Ms. Beard she is only a small percentage from

the minimum amount required. Yet, they rely on the very statutes that lay out the two-fold process as the authority ((MCL 168.522(10)). In that two-fold process candidates clearly need more than the absolute minimum to get on the ballot. For example, Ms. Beard indicated she submitted 3610 and the math equals 10-15% reduction needed to get to 4000. However, they clearly rely on the statute that says the signatures must be valid certified signatures, which makes this number more like 30% to 35% reduction (factoring in 20% throw out rate) and then survive the other prong of the two-fold statute allowing candidates challenges to the petitions, which means that even a 30% to 35% reduction will not get candidates who have already shown to this court (like Ms. Beard) she would have been on the ballot but for the Executive Order thus, violating her Constitutional rights to ballot access. Thus, this court inconsideration of the law, balancing interests and the statewide implications has correctly concluded that reduction of the 50% is appropriate. Not to mention, clearly the court did not take this decision lightly, the court referred to other states that were faced with these challenges and made similar reductions and those states did so without the necessity of lawsuits.

It is amazing that during these unprecedented times the Defendants continually wants to treat this as if it were just another election year, thus no need to reduce the signatures. The Defendants keep arguing the burden on the state is great if you reduce the signatures. As Mr. Esshaki correctly noted reduction of signatures eases the burden of the state because there is less to count and the easiest to apply.

Further, the court considered the denial of voter access to candidates that would have been on the ballot but for the Executive Order. Additionally, the rights of individuals access and advancement of one's political beliefs. *Williams v Rhodes*, 293 U. S. 23 (1968). The Defendants want this to be ignored. How are these interests best served by hoping this new untested

electronic signature fulfills the candidates needs within two weeks? Doubtful this is best way to achieve these interests. The most efficient way is to maintain the ruling, which meets these two interests that the Defendants do not want us to consider. The Defendants are limiting choices for the voter with is system they claim is the pot of gold at the end of a rainbow for candidates, the truth is it, in fact, impairs the voters right to express their political preference ((*State Board of Ed. v. Socialist Workers Party*, 440 U.S. 173 (1979)) by effectively limited/excluding candidates from the ballot that would have been on the ballot but for the Executive Order.

Ms. Beard and other candidates will suffer irreparable harm with the exclusion of the 50% or a change in the % of reduction. This will deprive them access to the ballot thereby, violating their constitutional rights and effectively throwing them off a ballot they would have been on but for the Executive Order.

The court properly concluded after deep reflection, hearing of the parties, considering all issues as it relates to more than just Mr. Esshaki and utilizing the motions presented to formulate the correct conclusion that provides the most reasonable remedy under the circumstances while attempting to balance the states interest verse the parties' interests.

2. Whether the portion of the Court's preliminary injunction ordering that signature requirements be reduced by fifty percent should be stayed pending the State Defendants' emergency appeal.

The standard for a stay pending appeal of the grant of a preliminary injunction is:

(1) Likelihood that the party seeking the stay will prevail on the merits of the appeal.
(2) The likelihood that the moving party will be irreparably harmed absent a stay.
(3) The prospect that others will be harmed if the court grant the stay AND
(4) The public interest in granting the stay.

Coalition to Defend Affirmative Action v Granholm, 473 F. 3d. 237 (6th Cir. 2006).

Clearly the court believed that an injunction was necessary, and the movant carried its burden under the circumstances because he did grant the injunction base on the information

everyone had at the time requested. *Jones v Caruso*, 569 F.3d 258 (6th Cir. 2009); *Overstreet v Lexington-Fayette Urban County Government*, 305 F. 3d 566, (6th Cir. 2002).

1. Defendants likelihood of success on the merits regarding signature reduction:

Note: Ms. Beard incorporates the previous arguments in this brief in, an effort to decrease repetition.

The Court correctly concluded that Mr. Esshaki demonstrated a substantial likelihood of success on the merits of his claim Mich. Comp Laws 168.133, 168.544f and the Governor's Orders as applied unconstitutionally burdened Mr. Esshaki's First and Fourteenth Amendment. The court correctly issues a remedy for this burden for all candidates.

The Defendants contend that the court's abused its discretion because it relied upon erroneous findings of fact, improperly applied the governing law, or used erroneous legal standard. *Mascio v Pub. Emps. Ret. Sys. Of Ohio*, 160 F. 3d. 310(6th Cir. 1998). The Defendant contends and/or implies essentially that Mr. Esshaki had more signatures than he claimed at the time of the hearing and the court relied on said assertion in considering the 50% reduction. The court also relied on the notion that he would not meet the signature requirement because of the pandemic. Yet, he did meet it. Therefore, this is an abuse of discretion. This is a great example of Monday quarterbacking or **hindsight is 20/20.** At the time, Mr. Esshaki could not have known he would have the number of signatures he ultimately submitted. Mr. Esshaki used the number of signatures in his possession at the time. Based on those numbers the threat of irreparable harm was real. Not to mention, the court did consider other parties when issuing its opinion (please see above argument). Additionally, without regurgitating the same two-fold argument above, it applies here as well.

Again, the Defendants argue that normally and traditionally the process is the way to do things. That the reduction of signatures is an "unprecedented disruption" to the norms of

Michigan elections. The cite *Republican Nat'l Comm. v. Democratic Nat'l Comm*, 2020 WL 1672707 (U.S. April 6, 2020) which states that courts should not ordinarily alter election rules on an eve of the election. Then they admit it is not the eve of an election, nor is its ordinary times. The court has correctly pointed out NUMEROUS times this is unprecedented times and calls for unprecedented remedies because no one could have predicted the pandemic in combination with the Executive Orders. As for the disruption, this is clearly a fallacy. Reducing the number of required signatures lessons the burden of the state especially, considering, the deadline extension. It will require less work across the board for the Defendants in both the two-fold processes (certification and challenges). The Defendants never clearly state how this is disruptive. The just make a blank statement with no support for it.

Again, they argue that the state has a compelling interest in requiring candidates to demonstrate the required modicum of support to established by the Legislature. *Jenness v Forton*, 403 U. S. 431, (1971). The court address this issue at nauseum. In fact, the Defendant make the same argument for relief as before. They know an untested unreliable, highly driven volunteer participation is required to accomplish maybe a few hundred thereby ultimately and still violating Plaintiffs Constitutional rights, which will be challenged as it will be shown to be ineffective to get signatures. They claim it is the least restrictive. It will be substantially more strictive and not effective, which was already argued by the parties. There is literally no way, for example, Ms. Beard (stated in oral arguments 4/23/2020) she would be required to get 200 a day for the next 2 weeks to pass the two-fold challenge. It was hard enough get them face to face. Thus, this means substantially burdens Ms. Beard's and others Constitutional rights because the effect is denial to ballot access.

Again, no where in their arguments for stay does the Defendants even acknowledge that the court did not strictly consider and narrowly tailor their opinion/relief to Mr. Esshaki. The court considered the motions by the party, numerous amicus briefs, numerous intervenor/joiner motions, how other states similarly situated have handle this issue and now, numerous oral arguments by numerous parties. The court did not tread lightly when the court made its ruling.

Again, they argue frivolous candidates, voter confusion, clutter ballots as a defense to the 50% reduction. The Court took these concerns in consideration the first time and adopted some of the relief the Defendants requested to avoid these issues. Not to mention, the primary is there to reduce the number of candidates in general election. It is also interesting that they make these sweeping broad arguments/statements but never explain exactly how a 50% reduction of signatures will create frivolous candidates, voter confusion, and clutter ballots. By allowing more candidates on the ballot. There are 15 incumbent judges running for office in the 3rd Circuit Court, who were not required to submit signatures. Currently, Ms. Beard has heard 8 people are running for 2 positions in Wayne County Circuit Court. Now, only 6 because 2 are dropping out. 6 will confusion voters, clutter the ballot but 15 incumbents who were not required to file signatures will not?

The Defendant contend that there should not be a reduction beyond the relief requested. As argued above, all the parties did not have the ability to submit proposed orders of relief. Yet, the court wisely and properly concluded that based on their motions, facts specific to them, and reviewing what other courts have done in case such as and concluded a reduction of 50% was appropriate. The court concluded that reasonable and diligent candidates should have reached the ½ way point and thus 50% is appropriate. Ms. Beard reached the ½ way point to survive the two-fold challenges. However, without the 50% remedy she will not be on the ballot. Ms. Beard

would have been on the ballot but for the Executive Orders violating her Constitutional rights. Constitutional rights that cannot be overridden and/or suspended in times of emergencies, even by the Governor. *Ex Parte Milligan* 71 U. S. 2 (1866) (still precedent today) The effect of eliminating the 50% reduction overrides Ms. Beards Constitutional rights. The court properly balanced the Constitutional rights of candidates verse the states interests when it befittingly concluded the appropriate remedy was a 50% reduction. Ultimately, this does not infringe on the states interests in these unprecedented times, in fact, it lessons the burden on the resources of the state which are scares at this time and during this pandemic. To be clear, had Ms. Beard (assuming others as well) had in put as to what relief they would have requested, Ms. Beard would have asked for a 50% reduction. Again, the Defendants consistently ignore the other parties in this case.

2. Will the Defendants will be irreparable harmed absent a stay and the public interest weights in favor of a stay.

Again, same argument different day with case law. Presumably for the Court of Appeals, which they would not have had but for this motion. The court already addressed this issue in their opinion and oral arguments on more than one occasion. For some reason the Defendants cannot understand, yet we hear it on the news every time the Governor has a press conference, "these are unprecedented times, they call for extraordinary measures, and we are going to have to make concessions for times like this". However, that does not apply to candidates seeking nominating petitions for them everything is normal because we need to protect the traditional election process and legislative statutes. The Governor has the power in change, even temporarily statutes during times of National and State Emergencies, which she declared. She simply refuses too. Interestingly, other states like New York indicate that they need to alter the election statutes to protect the democratic process and allow those who would

have been on the ballot access thereby allowing voters to advance their political preferences. Ultimately protecting candidates and voter's Constitutional rights. Here in Michigan, hard stance on not protecting the democratic process, ballot access and voter's rights, i.e. the Constitution.

They already argued that the state will be irreparably harmed by the court's order to not effectuate the election statues. *Maryland v King,* 133 S. Ct. 1 (2012) As stated above the state's interests DO NOT supersede Constitutional rights, *Ex Parte Milligan,* 71 U.S. 2 (1866). Thereby, if the court eliminates the 50% reduction, per their only request for relief, Plaintiff's Constitutional rights will be irreparably harmed for literally every argument already made in this brief. The court properly weighted the alleged harms when it issued the 50% reduction. This still carries out the states interest for a modicum, decreases their burden, allows for clear and concise application, and only has to be applied to this election under the unprecedented circumstances. On the other hand, the ruling then balances the Plaintiff's Constitutional rights to ballot access and voter's access to the advancement of a political preference. Additionally, it provides remedy to the candidates that would have meet the requirements but for the Executive Order during a pandemic. Ultimately, this is a win-win ruling. It cannot be seen any other way.

As for Defendants claim that Mr. Esshaki would not be successful on the merits for an appeal using hindsight and ignoring other parties in this case is ridiculous. Defendants does not have a lower burden. In fact since the court has allowed other parties to intervene/join and amicus briefing. I would say that the merits of Defendants arguments will fail, as they have for the fourth time arguing these arguments (Response, oral argument, current motion, and oral arguments for it), even with the addition of case law.

3. Threat of harm to others is outweighed by the other factors.

The court wisely concluded that other candidates will be affected by its ruling. This is common sense. Mr. Esshaki is not the only one running. Again, the Defendants argue the

extension of deadline and electronic signatures will help them succeed as if nothing has happened. Please note early arguments regarding this exact issue to be included by reference to avoid duplicity. What the Defendants fail to understand is that their method of collection is untested and unproven to be effective, yet they want candidates to wholly rely on it for signatures in two weeks and reliance that the volume needed can be achieved.

Defendants likelihood of success (arguing the same thing four times now). It was not successful the first two times it is unlikely to be successful now, especially with the addition of other parties and the *amicus* briefs. This clearly supported the court's assertion that others will be affected thus the need to tailor its ruling to address all candidates who are similarly situated as the parties.

The Defendants irreparable harm was balanced against the Plaintiffs and other candidates Constitutional irreparable harm when the court reduced it to 50%. Defendant does not specifically indicate exactly what the actual harm would be in the reduction, they simply indicated repeatedly the clients do not want it.

Time is of the essence for not only the courts but for the candidates. If the court allows a stay, this decreases, yet again the time candidates have to comply with signatures.

In terms of harm to other candidates with the exclusion of the 50% reduction, like Ms. Beard, they would have been on the ballot but for the Executive Orders making it improbable of obtaining the appropriate and standard (normal practice) of signatures to be successful in the two-fold challenges and not simply get the exact minimum amount, which effectively takes you off the ballot because the two-fold challenge isn't not considered, which the Defendants (relying on the very statutes for the two-fold challenge) indicates isn't necessary. The irreparable harm to one's Constitutional rights has been argued above. The fact that Defendants refuse to

acknowledge, or perhaps do not grasp the irreparable harm to others (candidates) with the reduction of the signatures, shows the magnitude and the seriousness of the problem candidates face during this election.

CONCLUSION AND RELIEF REQUESTED.

For the reasons indicated above and argued numerous times already, the Defendant's request for relief is not warranted and should be denied. Nor has anything changed to warrant a request for relief. They want this court to eliminate the signature requirement based on one Plaintiff and in hindsight while ignoring the other parties to this lawsuit and the effect on them. Not to mention other candidates who will also be affected and have detrimentally relied on the ruling. It is ridiculous for the Defendants to request such relief with their thinly veiled attempt to use case law they could have used before but didn't and now need to rely on in the Court of Appeals, thus the need for this motion. This has nothing to do with hindsight. Cases are not ruled on based on hindsight. The facts presented at the time were done in good faith and accurate. The court appropriately ruled in considering all the parties, motions, defenses and what other states were doing in these unprecedented times. The court's ruling was not narrowly tailored to one Plaintiff, yet their relief only focuses on this Plaintiff, ignoring all the other facts and evidence. Defendants' have not met their burden to overcome Fed. R. Civ. P. 60(b)(2) or Fed, R. Civ P. 59(b)

The Defendants have not met their burden for Stay of the Order regarding the 50% reduction in the required signatures on the nominating petition to file in the Court of Appeals. The Defendant's likelihood of success is unlikely given the arguments above and what has previously been argued and failed numerous times. Their irreparable harm (not specifically stated) does not outweigh the irreparable harm to the Plaintiff and candidate's Constitutional rights. The stay will harm others who have detrimentally relied on the ruling. There is no way the public's interest to

have access to advance their political preference is being met by effectively eliminating candidates from the ballot that would have been on the ballot but for the Executive Order. By eliminating (only relief requested) the 50% reduction, the court will deny the public's interest. Therefore, the defendants Stay should be denied.

Respectfully submitted,

Deana Beard
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(734) 502-7411
dbeard916@yahoo.com

Dated: April 23, 2020

Certificate of Service

I hereby certify that on April 24, 2020, I electronically filed the documents with the Clerk of Courts using ECF system/email, which will provide electronic copies to counsel of record.

Respectfully submitted,

Deana Beard
2885 S Trenton Dr.
Trenton, MI 48183
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Dated: April 23, 2020

Exhibit A

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

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

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.

Case No. 2:20-CV-10831-TGB

Hon. Terrence G. Berg

DECLARATION OF STATEMENT FOR DEANA BEARD

NOW COMES, Ms. Beard pursuant to the court's request to the following questions:

1. How many signatures did you have at the time of the stay-at-home order (3/23/2020)?

   Answer: 3557 signatures, not certified as valid.

2. Have you been able to meet the previous existing requirements by 4/21/2020?

   Answer: Yes. Ms. Beard established her Committee by 3/3/2020. She submitted her affidavits on 4/20/2020 (the only appointment she could get). Additionally, she filed her nominating petitions on 4/20/2020 in reliance of the Court's order. The total uncertified signatures was 3610.

3. Have you done a mail campaign?

   Answer: Per her campaign manager. 3 petitions were sent out via. mail @1.50 a piece (2 envelops and stamps for each envelop). Again, Ms. Beard apologizes for

miscommunication with her campaign staff. She thanks the court for allowing the correction.

4. What was the cost of the campaign?

   Answer: $4.50. It is cost prohibited to mail out the needed signatures for this candidate as discussed.

5. What was the return of the mail campaign?

   Answer: Zero.

Respectfully submitted,

/s/ Deana Beard

Deana Beard, Esq.
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Dated: April 23, 2020