

Court of Appeals, State of Michigan

ORDER

Michigan Civil Rights Initiative v Board of State Canvassers

Henry William Saad
Presiding Judge

Docket No. 264204

Mark Cavanagh

LC No. 00-000000

Kathleen Jansen
Judges

The Court orders that the motion for contempt filed by plaintiff, Michigan Civil Rights Initiative (MCRI), is DENIED, due to MCRI's failure to attach an affidavit, as required by MCL 600.1711 and MCR 3.606(A).

The Court takes judicial notice of the transcript of the December 14, 2005, hearing conducted by the Board of State Canvassers that was filed by the parties in the matter pending in this Court. *In re Albert*, 383 Mich 722, 724; 179 NW2d 20 (1970); *In re Contempt of Calcutt*, 184 Mich App 749, 757; 458 NW2d 919 (1990), lv den 442 Mich 910 (1993) and 445 Mich 872 (1994).

Prior to the December 14 hearing, this Court issued orders on October 31, 2005, and December 7, 2005, directing the Board of State Canvassers to approve and certify the petitions, forthwith. In the latter order, the Court further directed that the orders take immediate effect, pursuant to MCR 7.215(F)(2). The transcript of the December 14th hearing reflects that Assistant Attorney General Patrick O'Brien thoroughly and repeatedly explained to the board that it was directed by the Court to approve and certify the petition filed by MCRI, unless the Supreme Court entered a stay of our orders. Board member Lynn Bankes eventually made a motion, that "we, the undersigned members of the Board of State Canvassers, as ordered by the Michigan Court of Appeals, hereby certify the initiative petition filed with the Secretary of State on January 6, 2005 to the November 2006 . . . general election ballot." The motion was supported by Chairperson Katherine DeGrow, and after some further discussion and statements made by the board members, member Bankes called the question, to which DeGrow responded that "[t]he question has been called on the motion in front of us." The motion made by Bankes regarding certifying the petition was the only motion pending at this time. The votes of chairperson DeGrow and board member Bankes are recorded as "Aye," whereas board member Paul Mitchell's vote is recorded as "No" and board member Doyle O'Connor's vote is recorded as "Abstaining." The vote resulted in no action on the motion, see MCL 168.22d, and, as a result, the board failed to certify the petition in direct violation of this Court's order to approve and certify the petition.

Because the Board failed to discharge its legal obligations, and because the form of the petitions complied with the statutory requirements, this Court subsequently issued an order on December 20, 2005, directing the Secretary of State to forthwith take all necessary steps and measures, consistent with the State Elections laws, to place the initiative on the November 2006 general election ballot. Because this order effectively left board members O'Connor and Mitchell no opportunity to purge their apparently contemptuous votes, this Court must proceed with criminal contempt proceedings for violating this Court's clear and unconditional directive to certify the petition. See MCL 600.1701(c) and (g); *In re Contempt of Auto Club Ins Assoc*, 243 Mich App 697, 713; 624 NW2d 443 (2000).

Accordingly, on the Court's own motion, we order that board members Doyle O'Connor and Paul Mitchell appear personally before this Court on June 8, 2006 at its courtroom in the Hall of Justice, 925 West Ottawa Street, Second Floor, Lansing, Michigan, at 9:00 a.m., to show cause why they should not be held in criminal contempt of this Court. The charge against board member O'Connor is that he acted in direct violation of this Court's order of December 7, 2005, when he abstained from voting on the motion to certify the petition. The charge against board member Mitchell is that he acted in direct violation of this Court's order of December 7, 2005, when he voted "no" on the motion to certify the petition.

On the Court's own motion, pursuant to MCR 7.216(A)(7) and the Court's inherent power to operate efficiently and fairly, Frank Harrison Reynolds (P-29917) is hereby APPOINTED to function as the presenter of the evidence and argument at the hearing on the order to show cause and any related proceedings, including appeals or collateral review proceedings.

On the Court's own motion, pursuant to MCR 7.216(A)(7) and the Court's inherent power to operate efficiently and fairly, the Honorable Harold Hood (P-15102) is hereby APPOINTED to function as a special master and to conduct any necessary pre-trial hearings and the hearing on the order to show cause and to provide findings of fact, conclusions of law and recommendations to the panel.

O'Connor and Mitchell are hereby advised that they have the right to be represented at the hearing by counsel, a right to present and examine witnesses, and a right to offer testimony. The hearing will be recorded and a transcript will be available upon request.

In lieu of appearing at the show cause hearing, O'Connor and Mitchell may each pay a fine of \$250.00, which is the statutory maximum fine authorized for a finding of criminal contempt. MCL 600.1715(1). The payment of the aforementioned fine shall be deemed an admission of contempt.

Should O'Connor pay the fine in full prior to June 1, 2006, then he need not appear before this Court. If O'Connor fails to pay the fine and/or fails to appear at the above stated time and place for the show cause hearing, the Clerk shall issue a bench warrant for his arrest immediately thereafter. Should Mitchell pay the fine in full prior to June 1, 2006, then he need not appear before this Court. If Mitchell fails to pay the fine and/or fails to appear at the above stated time and place for the show cause hearing, the Clerk shall issue a bench warrant for his arrest immediately thereafter.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 3 - 2006
Date

Sandra Schultz Mengel
Chief Clerk