UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 17-2053

PETER BORMUTH,
Appellant

v.

RUTH JOHNSON,
Appellee

On Appeal from United States District Court, Eastern District of Michigan,
Southern Division, Case No. 2:16-cv-13166
District Judge, Hon. Nancy G. Edmonds

APPELLANT'S BRIEF

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ORAL ARGUMENT REQUESTED

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CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendment 14 in pertinent part holds:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Michigan Constitution of 1963, Article I, § 2

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.

Michigan Constitution of 1963, Article II, § 4

STATUTORY PROVISIONS

42 U.S.C. § 1983 in pertinent part holds:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

52 U.S.C. § 10307 in pertinent part holds:

No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of chapters 103 to 107 of this tile or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

28 U.S.C. 1343(a)
42 U.S.C. § 1985(3)

MCL § 168.162
MCL § 168.179
MCL § 168.879
MCL § 169.218

JURISDICTIONAL STATEMENT

This is an appeal from a final order granting summary judgment to Defendant, Ruth Johnson, on Appelants' Fourteenth Amendment challenge to the Secretary of State's refusal to conduct a recount of a primary election vote conducted on August 2, 2016 and refusal to accept late campaign finance disclosure form filings by fax after Defendant initially instructed the Appellant to file by fax. The final judgment was issued and entered on August 1, 2017. Appellant filed a timely notice of appeal on August 30, 2017. The District Court had subject-matter jurisdiction under Amendment 14 of the U.S. Constitution, and under 28 U.S.C. § 1331 & 28 U.S.C. § 1343(a)(4), and this Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT ON ORAL ARGUMENT

Following F.R.C.P. 34(a)(1) the Appellant respectfully requests oral argument. Oral argument would be helpful to the panel in understanding the timeline of events and the questionable application of *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (Mich. 2016) WL 7108573 to this case.

STATEMENT OF THE ISSUES

The following issues are presented for review:

1. **Does the standard for recounts created in *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (2016) WL 7108573 violate the due process rights of voters [and third party candidates] and should this Court find it unconstitutional?**

2. **Can the standard created by *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (2016) WL 7108573 be reasonably applied to this case?**

3. **Should the standard created by *Attorney General v. Bd. of State Canvassers*, No. 335947 – N.W. 2d -- (Mich. 2016) WL 7108573 be retroactively applied to this case since the Appellant was reliant on *Santia v. Bd. of State Canvassers*, 152 Mich. App. 1 (1986) and *Kennedy v. Bd. of State Canvassers*, 127 Mich. App. 493 (1983) when filing his complaint?**

4. **Is a written and signed communication from a government employee something that a citizen can rely on?**

5. **Should the Appellant's due process and equal protection claims stand because a facially neutral regulation [MCL § 169.218] was unequally administered by the Secretary of State?**

STATEMENT OF THE CASE

The Michigan Election Law, Act 116 of 1954 was passed by the Legislature to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; and to prescribe penalties and provide remedies. Section MCL 168.879 was included to allow a candidate (or state party chairman) to petition for a recount if they knew of, or simply suspected, mistake or fraud in the primary or general election process. Section MCL 168.862 was included to allow a recount in any precinct or precincts.

Manipulation of electronic voting machines is a relatively new form of voting fraud and a serious threat to our democracy. Several states use electronic voting machines that do not utilize a paper ballot leaving our elections open to manipulation by government, parties, corporations, or foreign intelligence agencies. Michigan utilizes optical scan voting machine that do utilize a paper ballot and thus the certification of election results can be checked by hand recounts. Experts have determined that random recounts of individual precincts are effective means of preventing this new form of voting fraud.

The Appellant provided a compelling list of circumstantial evidence for fraud including: the local Democratic Party recruited Christian Minister Ron Brooks to run against the Appellant to deprive the Appellant of an uncontested primary race because they didn't want a Pagan on the

ballot (Doc. #1, ¶ 14); pre-primary polls showed the Appellant ahead by a large margin in voter recognition (Doc. #1, Exhibit B, #13); a Precinct Captain exhibited religious prejudice (Doc. #1, ¶ 34); votes were suppressed by road construction blocking access to the polling place in Ward 5 where Appellant was expected to be dominant (Bormuth, Obj. p.9, Exhibit 2); the unofficial 420 vote count was suspicious (Doc. #1, ¶ 35); DieBold/Premire/ES&S optical scan voting terminals are subject to attack including "swapping the votes of two candidates, or biasing the results by shifting some votes from one candidate to another." (Doc. #1, ¶ 53); the GAO found that these electronic voting systems "did not encrypt cast ballots or system audit logs, and it was possible to alter both without being detected and it was possible to alter the files that define how a ballot looks and works so that the votes for one candidate could be recorded for a different candidate." (Doc. #1, ¶ 54); error was documented recently with these same machines in Barry County, Michigan. (Doc. #1, ¶ 55) and; Secretary of State Ruth Johnson personally witnessed and acknowledged in a letter to the Election Assistance Commission that the ES&S voting machines can report "inconsistent vote totals" and that "election workers would have no inkling that ballots are being misread." (Doc. #1, ¶ 56).

Based on this factual evidence the Appellant filed a Petition for Recount under MCL 168.879 with the Secretary of State for a recount in County of Jackson, City of Jackson, Ward 1, Precinct 2 on August 11, 2016 alleging he was aggrieved by possible fraud and paid the $125. fee. The Appellant's Petition for Recount of one precinct served four legitimate interests: (1) preventing voter fraud; (2) reducing costs of recounts by only targeting one precinct; (3) reducing administrative burdens of recounts by only targeting one precinct; and (4) increasing voter confidence in the voting system.

STATEMENT OF FACTS

Background

The Appellant is a Pagan Druid. On December 1, 2015 the Appellant filed to run for the 64th District Michigan House seat as a Democratic candidate. The Plaintiff filed a Statement of Organization Form for Candidate Committees with Elections Director Colleen Garety at the Jackson County Courthouse office. It was stamped received by the Michigan Department of State on December 4, 2015. Appellant filed for the reporting waiver (spending under $1,000) because he hoped to run unopposed in the primary. Democratic Party leaders who are Christian did not want the Appellant to run unopposed and recruited Ron Brooks, a Christian minister with no previous political involvement, to enter the race. Facing a primary challenge, the Appellant determined that he would exceed the $1,000. non-reporting threshold. On 6-1-16 the Appellant went to the Jackson County Courthouse to request a form to amend his statement of organization. He spoke with Elections Director Colleen Garety, who called the Secretary of State office in Lansing and spoke with Director Evelyn Quiroga of the Disclosure Data Division. The Appellant was informed that he did not need to amend his statement of organization, but that he was now required to file pre-primary candidate campaign statement which was due on July 22, 2016.

On July 22, 2016 Appellant went on the Secretary of State's website but could not find the link to the candidate campaign finance disclosure forms he was required to file. Appellant is a techno-peasant with limited computer skills. Appellant can surf the web, send e-mails, and use Microsoft Word to compose documents. Beyond those basics, his computer skills are nonexistent. The Appellant sent an e-mail to Disclosure@Michigan.gov requesting a link to the required forms. On

July 22, 2016 the Appellant received an e-mail response from Mark Diljak, Analyst in the Data Disclosure Division of the Michigan Bureau of Elections providing the Appellant with a link to the forms.

On July 25, 2016 Appellant spent two hours at the Jackson College Library filling out the forms on-line. Appellant discovered that the forms would not save the data he entered. Recognizing that he was already late in his filing, Appellant e-mailed Mark Diljak and requested the opportunity to mail the forms to the Secretary of State by certified mail. Appellant was e-mailed by Diljak that: "You can print and fill out the reports and then fax them to us if you like. Our fax number is 517-373-0941."

Appellant then had problems downloading the forms so he went to see Colleen Garety at the Jackson County Courthouse and she downloaded the forms for the Appellant. Appellant then accurately filled out the forms to the best of his ability and faxed them to the number provided by Diljak at 4:25pm on July 25, 2016. Appellant sent Diljak an e-mail stating that the forms had been sent by fax and requesting confirmation that they had been received. Diljak sent the Appellant an e-mail confirming the Department received the Appellant's filing.

On July 26, 2016 Appellant received a copy of a Complaint sent by Earl Poleski to the Secretary of State dated July 23, 2016 alleging a possible violation of the campaign finance law against the Appellant's candidate committee. Poleski was the Christian Republican incumbent in the 64th District whose seat the Appellant was seeking. Poleski saw the Appellant's pro-abortion/pro-environment anti-christian television political ads which offended him and he filed a complaint

based on his knowledge of how much a TV ad costs. These ads can be viewed at www.peterbormuth.com.

On July 27, 2016 the Appellant took the Poleski complaint to Elections Director Colleen Garety, who made a copy for her files. Garety contacted Evelyn Quiroga who replied by e-mail that: "The committee attempted to file the Pre-Primary CS, but was required to file electronically. We have communicated this to the committee. The committee was not required to update the Statement of Organization." On July 28, 2016 the Plaintiff received a letter from the Department of State interpreting the Michigan Campaign Finance Act (MCFA) Sections 18 (3) and 18(4) as requiring electronic filing, The letter informed the Appellant that his filing electronically by fax did not comply and that late filing fees were accruing.

On August 2, 2016 the primary vote was held in Michigan. The ballot contained the names of candidates running for the 7th District United States House of Representative seat. On the Republican side incumbent Tim Walberg was challenged by Douglas North. On the Democratic side, Gretchen Driskell was unopposed. On August 2, 2016 when the Appellant went to his polling place to vote road construction blocked access to the polling place in Ward 5 where Appellant was expected to be dominant, effectively suppressing the vote of any citizen who travelled to the polling place by automobile (Appellant was on his bicycle). While waiting in line to have his ID verified the Appellant made the innocent comment that: "I always vote, but this will be the first time I ever had an opportunity to vote for myself." The precinct captain who was standing nearby said: "O, who are you?" A volunteer at the table said: "You don't want to know." When the Appellant said: "Peter Bormuth" the precinct captain started humming "Jesus is Lord."

Appellant lost his race for the 64th District Michigan House seat to Ron Brooks. Preliminary reports indicated that the Appellant received 420 votes, a suspicious number since 420 is street slang for marijuana, and Appellant's platform advocated the legalization of marijuana. Ron Brooks received 1239 votes. On August 6, 2016 Appellant sent an e-mail to Garety and Quiroga requesting a recount in his race due to possible manipulation of the voting machine tallies. On August 11, 2016 Appellant filed a Petition for Recount under MCL 168.879 with the Secretary of State for a recount in County of Jackson, City of Jackson, Ward 1, Precinct 2 and paid the $125. fee.

Appellant participated in a phone conversation with Sally Williams and Lori Bourbonais of the Michigan Department of State on August 17, 2016. Also on August 17, 2016 the Appellant filed his post-election statement forms in a timely manner with the Secretary of State by electronic transmission by facsimile.

On August 18, 2016 Appellant received an e-mail from Williams stating: "Your petition for a partial recount of the August 2, 2016 primary results for the office of State Representative, 64th District (Democratic Party) has been rejected. The purpose of a recount under law is to confirm the election results as canvassed. A valid request for a partial recount must include a sufficient number of votes to possibly affect the outcome of the election. Your petition seeking the recount of a single precinct cannot meet this criteria and is therefore an insufficient filing….With respect to your $125 deposit that accompanied your recount petition, your funds will be returned to you. Please acknowledge receipt of this email, and let us know if you prefer to pick up the deposit in person or would like the funds returned to you via US mail." Appellant responded by e-mail on August 18, 2016 stating: "I do not want my funds returned to me. Please

hold them as i plan to file a lawsuit to have my Petition for Recount honored by your office and the election results sampled for fraud based on the vulnerability of the Jackson County voting machines to manipulation."

On August 24, 2016 Appellant received a letter from the Secretary of State dated August 18, 2016 rejecting his post-primary filing because it was sent by fax. On August 11, 2017 the Appellant sent the State of Michigan $1,000. (Flagstar Bank, Check No. 600068263) for the post-primary late-filing fees assessed by the Secretary of State.

Procedural History

Appellant filed his complaint commencing this action in the Eastern District of Michigan on September 1, 2016. On September 30, 2016 the Defendant's filed a Motion to Dismiss in Lieu of an Answer. On October 11, 2016 Appellant filed his Response. The Magistrate Judge issued a Report & Recommendation on the Appellant's recount claim on October 24, 2016. The Appellant filed objections on November 7, 2016 as did the Defendant. On January 10, 2017 the District Court issued an Opinion and Order adopting the Magistrate Judge's Report and Recommendation as Modified. On June 16, 2017 the Magistrate Judge issued a Report and Recommendation to Grant Defendant's Motion to Dismiss on Appellants remaining claim [electronic filing]. Appellant filed objections on June 30, 2017. On August 1, 2017 the District Court issued an Opinion and Order Adopting the Magistrate Judge's June 16, 2017 Report and Recommendation and entered final judgment on both the Appellant's claims. On August 30, 2017 the Appellant filed his Notice of Appeal.

STANDARD OF REVIEW

This Court reviews a district court's grant of summary judgment de novo. *City Management Corp. v. United States Chem. Co.,* 43 F.3d 244 (6th Cir. 1994). Summary judgment is appropriate only if the pleadings, together with the affidavits, show there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. FED. R. CIV. P. 56(A); *Tucker v. Tennessee*, 539 F.3d 526, 531 (6th Cir. 2008). The burden is on the moving party to show that no genuine issue of material fact exists. FED. R. CIV. P. 56(C)(1); *Bennett v. City of Eastpointe,* 410 F.3d 810, 817 (6th Cir. 2005). The facts, and the inferences drawn from them, must be viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986). The central issue is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 255 (1986).

Filings by pro se litigants are to be construed liberally. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); see also *McPherson v. Coombe*, 174 F.3d 276, 280 (2d Cir. 1999) (pro se party's pleadings should be read liberally and interpreted "to raise the strongest arguments that they suggest").

SUMMARY OF THE ARGUMENT

The District Court applied the definition of "aggrieved" and the standard for recounts established in *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (Mich. 2016) WL 7108573 to this case. This standard violates the due process right of voters and candidates to have votes accurately tabulated and should be declared unconstitutional by this Court.

Moreover, the District Court erroneously applied the standard to the facts of this case since the Appellant had a reasonable chance to win the primary if candidate tabulations had been reversed by the DieBold/Premire/ES&S voting machines. And by targeting only one precinct as allowed by MCL 168.862, the Appellant acted to reduce the cost and administrative burden of the recount on the State.

Finally, the standard should not have been applied retroactively to this case since the Appellant was proceeding under the standard created by *Kennedy v. Bd. of State Canvassers*, 127 Mich. App. 493 (1983) and *Santia v. Bd. of State Canvassers*, 391 NW 2d 504, Mich. App. (1986) when he filed his complaint.

The Appellant also believes the District Court erred when ruling that a citizen may not rely on a written statement (e-mail) from a Michigan Bureau of Elections employee, since written communications have always been assumed to be binding, unlike oral telephone communications. The Appellant finds it legally significant that in the related field of contracts Michigan Courts have held that a typed name placed at the end of an e-mail is binding. (see *Kloian v. Domino's Pizza*, LLC, 273 Mich App 449; 733 NW2d 766 (2006)).

And the Appellant believes his due process and equal protection claims were erroneously dismissed by the District Court because a facially neutral regulation [MCL § 169.218] was unequally administered by the Secretary of State. Counsel for Defendant, Denise Barton admitted in a letter dated March 30, 2017 that they normally accept late filings by mail.

LEGAL ARGUMENT

1. The standard for recounts created in *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (2016) WL 7108573 violates the due process rights of voters and candidates.

The Magistrate Judge correctly held that "any candidate whose vote total is negatively impacted by fraud has been 'aggrieved.'" This comports with Supreme Court rulings that substantive due process "provides heightened protection against government interference with fundamental rights." *Wash. v. Glucksberg*, 521 U.S. 702, 720 (1997). The Court held that the 14th Amendment: "[S]pecially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," … Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decision-making," *Id*. at 720-721 (1997). The Court and this Circuit have long held that voting and having one's vote accurately tabulated is a "fundamental political right", entitled to protection under the 14th Amendment. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966); *Harman v. Forssenius,* 380 U.S. 528, 537 (1965); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *Obama for Am. v. Husted,* 697 F.3d 423, 428 (6th Cir. 2012); *Hunter v. Hamilton County Bd. of Elections*, 635 F.3d 219, 234 (6th Cir. 2011). The Supreme Court specifically stated in *Gray v. Sanders,* 372 US 368 (1963):

> Every voter's vote is entitled to be counted once. It must be correctly counted and reported. As stated in *United States v. Mosley*, 238 U.S. 383, 386, 59 L. Ed. 1355, 35 S. Ct. 904, "the right to have one's vote counted" has the same dignity as "the right to put a ballot in a box." It can be protected from the diluting effect of illegal ballots. *Ex parte Siebold*, 100 U.S. (10 Otto) 371, 25 L. Ed. 717; *United States v.*

> *Saylor*, 322 U.S. 385, 88 L. Ed. 1341, 64 S. Ct. 1101. And these rights must be recognized in any preliminary election that in fact determines the true weight a vote will have. See *United States v. Classic, supra; Smith v. Allwright*, [321 U.S. 649, 88 L. Ed. 987, 64 S. Ct. 757]. The concept of political equality in the voting booth contained in the Fifteenth Amendment extends to all phases of state elections, see *Terry v. Adams*, [345 U.S. 461, 97 L. Ed. 1152, 73 S. Ct. 809].
>
> 372 U.S. at 380.

The Appellant claims this right obviously extends to recounts ("all phases of state elections") and is not diminished by whether a voter cast their ballot for a third party candidate who had no chance to win the general election.

The District Court instead applied a ruling by the Michigan Court of Appeals, *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (2016) WL 7108573 (Mich Ct. App. Dec. 6, 2016)[1] and held that:

> "to meet the aggrieved candidate requirement under subsection 879(1)(b), the candidate must be able to allege a good faith belief that but for mistake or fraud, the candidate would have had a reasonable chance of winning the election." *Id* at 5. In other words, "in the context of an election, a candidate suffers a loss or injury-and thus is 'aggrieved' for purposes of MCL 168.879(1)(b)-by losing an election the candidate would have won but for the errors in the counting of votes" *Id*

While it is true that the administration of the election process is a matter which has largely been entrusted to the states, the Supreme Court has made it clear that "the states may not infringe upon basic constitutional protections." *Kusper v. Pontikes*, 414 U.S. 51, 57, 94 S. Ct. 303, 307, 38 L. Ed. 2d 260 (1973). The Supreme Court has long recognized that the freedom of association is protected by the First Amendment. *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441, 94 S.

[1] On December 9, 2016 the Michigan Supreme Court declined the application for leave to appeal from the December 6, 2016 judgment of the Michigan Court of Appeals cited by the District Court.

Ct. 656, 38 L. Ed. 2d 635 (1974); *United Mine Workers v. Illinois Bar Association*, 389 U.S. 217, 88 S. Ct. 353, 19 L. Ed. 2d 426 (1967); *NAACP v. Alabama*, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958). This right applies, not only to federal edicts, but also to State pronouncements. *New York Times v. Sullivan,* 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). Similarly, the right to vote has always been recognized as one of our most salient rights: "Other rights, even the most basic; are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535, 11 L. Ed. 2d 481 (1963). The freedom of association right of a voter to vote for a third party candidate and the right to have that vote accurately tabulated cannot be infringed by the State of Michigan by claiming that the candidate had no chance to win the election. Moreover, an accurate vote count is necessary short of a change in result since MCL 168.613(a)(2) states “A political party that received 5% or less of the total vote cast nationwide for the office of president in the last presidential election shall not participate in the presidential primary election.” Thus a third party candidate can be aggrieved and demand a recount on behalf of their voters even if they have no chance of winning the election. Furthermore, under federal election laws, a candidate is eligible for partial public funding based on election performance. See 26 USC 9002 *et seq*. So even a candidate with no chance to win has a significant legal and financial interest in ensuring that the vote count is accurate and they may be aggrieved by any error in the canvas of votes.

The Michigan Court of Appeals ruling also violates Michigan law. Nowhere in MCL 168.879 does the Legislature indicate that that the “candidate must be able to allege a good faith belief that but for mistake or fraud, the candidate would have had a reasonable chance of winning the election.” The statute only requires the petition to allege that the candidate is aggrieved on

account of fraud or mistake in the canvass of the votes. The Michigan Court of Appeals, for obvious political reasons, has twisted the statute when the Legislature's intent can be clearly seen. Had the Legislature intended to restrict recounts to candidates with a chance to win, it could have made that clear by requiring a certain percentage of the vote as a condition or by requiring candidates to be within a certain margin of victory. It did neither of these things. Indeed, the language chosen by the Legislature does not even require any evidence of fraud or mistake. It allows bare undocumented allegations to suffice. Public policy requires that statutes controlling the manner in which elections are conducted be construed as far as possible in a way which prevents the disenfranchisement of voters through the fraud or mistake of others. *Lindstrom v Board of Canvassers of Manistee County,* 94 Mich 467, 469; 54 NW 280 (1893); *Groesbeck v Board of State Canvassers,* 251 Mich 286, 291-292; 232 NW 387 (1930). Therefore, this Court must not construe the statute to impose technical requirements preventing a recount unless such a construction is clearly required by the language the Legislature employed. *Kennedy v Board of State Canvassers,* 127 Mich App 493, 496-497; 339 NW2d 477 (1983). The plain text of MCL 168.879(1)(b) seems to provide a clear definition of an "aggrieved" candidate: one who alleges they are aggrieved on account of fraud or mistake in the canvass. As the Magistrate Judge noted, one of the definitions of aggrieved in Blacks Law Dictionary is simply "having legal rights that are adversely affected." *Aggrieved, Blacks Law Dictionary* (10th ed. 2014). The Magistrate correctly held: "Candidates for public office have a right, independent of the outcome of an election, to have votes in their favor accurately tabulated." (Doc #13, p. 14, ft. n. 8).

2. The standard created by *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (2016) WL 7108573 cannot be reasonably applied to this case.

The District Court's application of *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (2016) WL 7108573 (Mich Ct. App. Dec. 6, 2016) should not be applied to the facts of this case for two reasons:

A. The Appellant has a reasonable chance of winning this election should the requested recount show fraud.

The Appellant is not Jill Stein who had no chance to win the general election. The Appellant lost his primary election to Christian minister Ron Brooks by a count of 1240 to 419 and if voting machine reversal of candidate tabulations took place in City of Jackson wards as alleged in his Petition for Recount, the Appellant could have easily won this election. Should the recount be undertaken, and show voting machine manipulation and/or reversal of candidate vote counts in Ward 1, Precinct 2, the Appellant would ask the Justice Department to investigate and prosecute the election fraud since it involved misuse or unauthorized trespass of a computer system used in the election. Malfeasance by local election officials in the City of Jackson, such as rendering false vote tabulations, can be prosecuted under 18 U.S.C. §§ 241, 242 as well as under 52 U.S.C. §§ 10307, 20511 in elections where federal candidates are on the ballot. The Appellant has effective legal relief available should this Court grant the request for a recount and should that recount show false vote tabulation. If voting machine tabulations had been altered or reversed in one city precinct, that is clear and convincing evidence of voting fraud and sufficient for an investigation by the United States Attorney responsible for Michigan into the vote counts in the other city wards and precincts.

The facts of this case differ dramatically from those in *Attorney General v. Bd. Of State Canvassers*, No. 335947 – N.W. 2d -- (2016) WL 7108573 (Mich Ct. App. Dec. 6, 2016) where Jill Stein had no reasonable chance to win the election. The Appellant limited his Petition for Recount to one precinct because there was only circumstantial evidence of fraud, not specific evidence of wrongdoing. The Appellant took the State's interests in reducing costs and administrative burdens into account and is now being penalized for doing so.[2] Section MCL 168.862 specifically allows a recount "in any precinct or precincts" and a recount of one prescient showing fraud would have allowed the Appellant to overturn the results of this primary election.

B. The Appellant specified the type of fraud he suspected in his Petition for Recount.

Because only circumstantial evidence was available to the Appellant, he could not cite specific allegations of wrongdoing in his Petition for Recount. But he did specify the type of fraud he was alleging: manipulation of the Optical Scan DieBold/Premire/ES&S voting machines used in the City of Jackson wards and precincts. On October 11, 2008 while still Oakland County Clerk, Defendant Ruth Johnson sent a letter to the Election Assistance Commission in Washington DC stating that: "While problems with the performance and design of the [ES&S] M-100's have been documented, this is the first time I have ever questioned the integrity of these machines. The issue is this - four of our communities or eight percent – reported inconsistent vote totals during their logic and accuracy testing with the ES&S machines. The same ballots, run through the same machines, yielded different results each time." (see Plain. Comp. Exhibit P – Johnson 10/11/08 letter to Election Assistance Commission). Given that Defendant Ruth Johnson has personally

[2] The Appellant's Petition for Recount of one precinct served four legitimate State interests: (1) Preventing voter fraud; (2) Reducing costs of recounts by only targeting one precinct; (3) Reducing administrative burdens of recounts by only targeting one precinct; and (4) Increasing voter confidence in the voting system.

witnessed the type of fraud the Appellant was alleging, it is inconceivable how she could "reasonably" deny the Appellant's Petition for Recount.

The Appellant also cited a University of Connecticut study *Security Assessment of the Diebold Optical Scan Voting Terminal* by authors A. Kiayias; Michel A. Russell; A.A. Shvartsman from 2006 that claimed the AV-OS used in the City of Jackson "can be compromised with off-the-shelf equipment in a matter of minutes even if the machine has its removable memory card sealed in place. The basic attack can be applied to effect a variety of results, including entirely neutralizing one candidate so that their votes are not counted, **swapping the votes of two candidates, or biasing the results by shifting some votes from one candidate to another."** (Plain. Comp. Exhibit M - *Security Assessment of the Diebold Optical Scan Voting Terminal*)

The Appellant also provided the District Court with the 2005 Government Accountability Office (GAO) report assessing the significant security and reliability concerns that have been identified with electronic voting systems. The GAO noted that "studies found (1) some electronic voting systems did not encrypt cast ballots or system audit logs, and it was possible to alter both without being detected; **(2) it was possible to alter the files that define how a ballot looks and works so that the votes for one candidate could be recorded for a different candidate**; and (3) vendors installed uncertified versions of voting system software at the local level." (see Plain. Comp. Exhibit N - *Elections: Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Underway, but Key Activities Need to Be Completed* (GAO-05-956), September 2005, p. 2).

Given this authoritative evidence for the possibility of voting machine manipulation, together with the circumstantial evidence showing the Democratic Party recruited Christian Minister Ron Brooks to run against the Appellant to deprive the Appellant of an uncontested primary race because they didn't want a Pagan on the ballot; the pre-primary polls which showed the Appellant ahead by a large margin in voter recognition; a Precinct Captain exhibiting religious prejudice; voting suppression by road construction blocking access to the polling place in Ward 5 where Appellant was expected to be dominant; and the suspicious [unofficial] 420 vote count, the Appellant believes his petition for Recount must be granted and enforced by this Court.

3. The standard created by *Attorney General v. Bd. of State Canvassers*, No. 335947 – N.W. 2d -- (Mich. 2016) WL 7108573 should not be retroactively applied to this case since the Appellant was reliant on *Kennedy v. Bd. of State Canvassers* and *Santia v. Bd. of State Canvassers* when filing his complaint.

In *Kennedy v. Bd. of State Canvassers*, 127 Mich. App. 493 (1983) the [intervening defendant] stated "he believes he is aggrieved on account of fraud or mistake in the canvassing of the votes due to fraud or mistake in tallying or counting or mechanical problems." Like the Appellant, he admitted that he had no actual knowledge of any particular instance of fraud or mistake. The Court of Appeals held that the mandatory language of MCL 168.879 required a recount to take place when the board is presented with a sufficient petition and the required deposit. In *Santia v. Bd. of State Canvassers,* 152 Mich. App. 1 (1986) the plaintiff requested a recount of the votes though she lost 11,890 to 7,638, claiming that the votes received by each candidate were transposed because of computer error. This is the same claim that the Appellant is making. The

Court of Appeals ruled that under MCL 168.879 the defendant had a duty to conduct a recount. The Court held:

> Public policy requires that statutes controlling the manner in which elections are conducted be construed as far as possible in a way which prevents the disenfranchisement of voters through the fraud or mistake of others. *Lindstrom v Board of Canvassers of Manistee County,* 94 Mich 467, 469; 54 NW 280 (1893); *Groesbeck v Board of State Canvassers,* 251 Mich 286, 291-292; 232 NW 387 (1930). Therefore, we must not construe the statute to impose technical requirements preventing a recount unless such a construction is clearly required by the language the Legislature employed. [*Kennedy v Board of State Canvassers,* 127 Mich App 493, 496-497; 339 NW2d 477 (1983).] *Santia v. Bd. of State Canvassers,* 152 Mich. App. 1 (1986)

Attorney General v. Bd. of State Canvassers, No. 335947 – N.W. 2d -- (Mich. 2016) WL 7108573 overturned this long and consistent line of procedural decisions and established a new standard. This decision was indefensible in light of the law at the time and obviously unexpected at the time the Appellant filed his complaint, yet the District Court applied it retroactively in this case. "A federal right [due process] turns upon the status of state law as of a given moment in the past— or, more exactly, the appearance to the individual of the status of state law as of that moment . . . ." 109 U. Pa. L. Rev., *supra,* at 74, n. 34. When a state court overrules a consistent line of procedural decisions with the retroactive effect of denying a litigant a hearing in a pending case, it thereby deprives him of due process of law "in its primary sense of an opportunity to be heard and to defend [his] substantive right." *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill,* 281 U. S. 673, 678 (1930). The basic due process concept involved is the same as that which the Supreme Court has often applied in holding that an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question. See, *e.g., Wright* v. *Georgia,* 373 U. S. 284, 291 (1963);

NAACP v. *Alabama,* 357 U. S. 449, 456-458 (1958); *Barr* v. *City of Columbia,* 378 U.S. 146 (1964). The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government. See *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill,* 281 U. S. 673, 678 (1930). Due process concerns prevent retroactive application of judicial decisions especially where the decision is unforeseeable and has the effect of changing existing law. The Supreme Court has treated civil and criminal cases as essentially the same for retroactivity purposes. See *Linkletter v. Walker*, 381 U.S. 618 at 627 (1965) ("no distinction [will be] drawn between civil and criminal litigation"). And in *Chevron Oil Co. v. Huson* 404 U.S. 97 (1971) the Court stated:

> In our cases dealing with the nonretroactivity question, we have generally considered three separate factors. First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, see, *e. g., Hanover Shoe* v. *United Shoe Machinery Corp., supra,* at 496, or by deciding an issue of first impression whose resolution was not clearly foreshadowed, see, *e. g., Allen* v. *State Board of Elections, supra,* at 572. Second, it has been stressed that "we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." *Linkletter* v. *Walker, supra,* at 629. Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the `injustice or hardship' by a holding of nonretroactivity." *Cipriano* v. *City of Houma, supra,* at 706.

Based on this analysis, the Fourth Circuit has concluded that in civil cases considerations of reliance and a need for stability in the law weigh in favor of prospectivity. *Ramey v. Harber,* 589 F.2d 753 (4th Cir. 1978), cert. denied, 442 U.S. 910 (1979). And In *People v. Doyle*, 451 Mich. 93, 104, 545 N.W.2d 627 (1996), the Michigan Supreme Court, while embracing "the general rule

[is] that judicial decisions are to be given complete retroactive effect", specifically noted that "complete prospective application…[is] limited to decisions which overrule clear and uncontradicted case law." Which is exactly what has occurred in this case. *Attorney General v. Bd. of State Canvassers*, No. 335947 – N.W. 2d -- (Mich. 2016) WL 7108573 should not have been applied retroactively in this case by the District Court.

4. The Appellant was reliant on written and signed communication from a government employee when he faxed his Campaign Finance Disclosure forms to the Secretary of State.

The District Court renders Diljak's instructions to the Appellant nugatory by erroneously comparing those instructions to an IRS agent who miscalculates a taxpayer's liability and thus misstates the law regarding the tax code. The magistrate relied on the body of case law holding that a taxpayer may not rely on the misstatements of an IRS agent and specifically finds the circumstances in *United States v. Guy,* 978 F.2d 934 (6th Cir. 1992) as analogous to the instant case and the district Court adopted this reasoning. This is a serious error of law since in *Guy* and the associated body of case law, the representation by the IRS agent(s) was oral. (see *United States v. Guy*, 978 F.2d 934 (6th Cir. 1992) (Government was not estopped from recovering erroneous tax refund, as any reliance upon oral statements of IRS agent regarding taxpayer's right to retain refund was unreasonable); *Kennedy v. United States* 965 F.2d 413 (7th Cir. 1992) (Although IRS agent orally misrepresented amount of liability, reliance on those representations concerning discharge of taxpayer's liability was not reasonable.); *Henry v. United States*, 870 F.2d 634 (Fed. Cir. 1989) (Taxpayer could not reasonably rely on IRS agent's oral advice; *First Alabama Bank v. United States*, 981 F.2d 1226 (11th Cir. 1993) (Taxpayer could not have reasonably relied on alleged oral statements by IRS agent that statute of limitations on

action to recover refunds of taxes was tolled by reconsideration of disallowance of claimed refund because statute provides that extensions of statute of limitations must be in writing, and that reconsideration does not extend period within which suit may be begun.); *In re Larson*, 862 F.2d 112 (7th Cir. 1988) (Government was not estopped from collecting tax assessment on basis of oral statements allegedly made by IRS agents to taxpayers which led them to file for bankruptcy less than 240 days after tax assessment, making taxes nondischargeable;). The instant case differs from this body of case law in legally significant ways.

First, Diljak's advice was not given orally, but was communicated in writing (by e-mail) and signed by Diljak. Written instructions signed by an employee of the government carry far more weight than verbal communications. All citizens have the right to rely on written signed communications from the government. *Guy* and associated cases thus do not control the issue before this court. As stated in *Heckler v. Cmty. Health Services,* 467 U.S. 51 (1984) at 65:

> It is not merely the possibility of fraud that undermines our confidence in the reliability of official action that is not confirmed or evidenced by a written instrument. Written advice, like a written judicial opinion, requires its author to reflect about the nature of the advice that is given to the citizen, and subjects that advice to the possibility of review, criticism, and reexamination.

The District Court's response to the Appellant's Objection was that the Appellant "notably fails to point to any cases that actually rely on this proposed distinction between oral and written misstatements and treat the latter as binding on the issuing government agency." Apparently Judge Edmonds failed to read the above citation from *Heckler* which clearly makes the distinction. The reason there are no cases to cite is because it is a basic assumption of our law that a citizen may rely on a written communication from their government. The Appellant notes that the Michigan Court of Appeals, in the not unrelated area of contract law, held that a typed name

placed at the end of an e-mail was legally binding with regard to acceptance of a proposed settlement agreement. (see *Kloian v. Domino's Pizza, LLC*, 273 Mich. App. 449, 451-452; 733 NW2d 766 (2006).

5. The Appellant's due process and equal protection claims stand.

The Secretary of State could have posted the Appellant's filing on their system by having an employee scan the faxed documents and uploading them. This might have taken all of 10 minutes. This is what clerks in the 6th Circuit do with the Appellant's pro se written filings. Where exactly is the compelling state interest?

A. A facially neutral regulation [MCL § 169.218] was unequally administered by the Secretary of State.

The March 30, 2017 letter from Assistant Attorney General Denise Barton shows that the Secretary of State accepts late filings by mail. The Magistrate granted the Appellant's motion to supplement (see Doc #31) and this communication is part of the record. In the Appellant's July 25, 2016 e-mail to Diljak expressing his frustration because the electronic filing system did not save the data he entered, the Appellant specifically asked if he could mail the forms to the Secretary of State. ("I am going to have to download the forms and mail them to you. Is that ok?"). Diljak responded that the Appellant could fax the forms in and provided the fax number. In their brief responding to Plaintiff's motion to supplement, the defendants argued that the Appellant was "conflating two different points in time for campaign disclosure filings – on time and late." But as the Magistrate Judge accurately notes, the Appellant's filing was three days after the filing deadline, so it should have been accepted as a late filing. The only reason for not

accepting it, other than the prejudice against Pagans by these Christian scum[3], was to increase the late filing fees that the Secretary of State could collect. Certainly the maximization of late filing fees is not a legitimate use and purpose of MCFA § 169.218 by the Secretary of State. The Appellant is the first Pagan to run for state office in Michigan and thus it is certain that the Secretary of State has administered a facially neutral regulation unequally. No doubt most, if not all, of the previous candidates allowed to mail their forms in late were Christians.

B. The Supreme Court has held that classifications based on religion are suspect.

The Appellant is a Pagan and claimed religious prejudice when filing his complaint. The District Court claimed his assertions were not backed by citation to any authority. The Online Dictionary observes that pagan comes from Latin meaning *"rural dweller",* connoting a *"non-christian"* or *"follower of a polytheistic religion"* and notes that the word *"has recently evolved to become a general term for the followers of magical, shamanistic, and polytheistic religions which*

[3] The Appellant has made a practice of inserting the words "Christian scum" into his otherwise rational and considered communications as a deliberate strategy. The Appellant began using the term "Christian scum" after the Supreme Court ruled in *Snyder v. Phelps,* (131 S.Ct. 1207 (2011)) that *"…this nation has chosen to protect even hurtful speech on public issues to insure that public debate is not stifled."* That case allowed Christians to picket a soldier's funeral service with signs stating that God killed the soldier as punishment for the toleration of homosexuality in the United States. In *Bible Believers v. Wayne County,* 765 F.3d 578 (6th Cir. 2014)(en banc) this Circuit allowed Christians with T-shirts and signs saying "Believe in Jesus or die" and "Islam Is A Religion of Blood and Murder" to interrupt the City of Dearborn's Arab International Festival. One Bible Believer carried a severed pig's head on a stick. This Court stressed that the First Amendment ***"envelops all manner of speech, even when that speech is loathsome in its intolerance, designed to cause offense, and, as a result of such offense, arouses violent retaliation."*** The Appellant insists he has the same free speech rights as any Christian citizen to use language designed to cause offense and finds it annoying that Federal Judges in the Eastern District of Michigan retaliate by ruling against him when the arguments are in his favor. Hate speech is a powerful political tool, as we just saw in the last election when candidate Donald Trump called Mexicans *"rapists*", called Syrian refugees *"rabid dogs",* and called Rosie O'Donnell a '*slob with a fat ugly face"* and won the Presidency. Senator John McCain (R-Ariz.) called Code Pink, the women-led grass roots peace and social justice protestors *"low-life scum"* at a Senate Armed Services Committee hearing. David Agama, Michigan member of the Republican National Committee and chairman of the Top Gun PAC called homosexuals *"scum"* on his website. Texas AG Commissioner Sid Miller called Hillary Clinton a *"cunt"* in an election tweet. This Court cannot ask the Appellant to behave differently than his opponents and penalize him for his speech. Pagans believe in "tit for tat" not "love your enemy" or "turn the other cheek" and if Christian liberals want to be "good" and reject hate speech, that is their problem. The Appellant will follow the law as interpreted by this Court.

hold a reverence for nature as a central characteristic of their belief system." The Appellant has held these views publicly and sincerely since 1978, publishing books, essays, poetry, & music on the subject. The Constitution prohibits discrimination by government on the basis of religion and as a member of a minority faith, the Appellant qualifies as a suspect class for purposes of equal protection analysis, thus heightened scrutiny of the Secretary of State's action is warranted. The Supreme Court in *Torcaso* v. *Watkins,* 367 U. S. 488 (1961) expressly disavowed "the historically and constitutionally discredited policy of…limiting public offices to persons who have, or perhaps more properly profess to have, a belief in some particular kind of religious concept." *Id.,* at 494. The Court held that "[t]he fact . . . that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution." 367 U. S., at 495-496. The Appellant's claims demand strict scrutiny.

C. The Supreme Court has held that classifications based on wealth are suspect.

The District Court further stated that the Supreme Court has declined to find that classifications based on wealth are suspect. (Doc. #34, p. 4, ft. n. 2, citing R & R at 15 (citing *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)). But in *Lubin v. Panish*, 415 U.S. 709, 716, 722 (1974) the Supreme Court held that in the absence of reasonable alternative means of ballot access, the state could not disqualify an indigent candidate unable to pay filing fees. The Court voided a property qualification for appointment to local school boards in *Turner v. Fouche*, 396 U.S. 346, 362-63 (1970) holding the right to pursue an occupation, including that of public office, falls within the fundamental concept of liberty as guaranteed by the fourteenth amendment. "[T]he right of the individual. . . to engage in any of the common occupations of

life" has been repeatedly recognized by the Supreme Court as falling within the concept of liberty guaranteed by the Fourteenth Amendment. *Board of Regents v. Ross,* 406 U.S. 564, (1972) quoting *Meyer* v. *Nebraska,* 262 U. S. 390, 399 (1923). As long ago as *Butchers' Union Co.* v. *Crescent City Co.,* 111 U. S. 746 (1884), Mr. Justice Bradley wrote that this right "is an inalienable right; it was formulated as such under the phrase `pursuit of happiness' in the Declaration of Independence. . . . This right is a large ingredient in the civil liberty of the citizen." *Id.,* at 762 (concurring opinion). In *McDaniel v. Paty* 435 U.S. 518 (1978) the Supreme court held "the fact…that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria…" (quoting *Torcaso v. Watkins,* 367 U.S. 488 (1961) at 495-496). In his concurring opinion Justice White stated:

> Our cases have recognized the importance of the right of an individual to seek elected office, and have accordingly have afforded careful scrutiny to state regulations burdening that right. In *Lubin v. Parrish* 415 U.S. 709, 415 U.S. 716 (1974), for example, we noted: "This legitimate state interest, however, must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity. The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties, or both, and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the right of voters.

Based on controlling case law the Appellant has a fundamental interest that demands strict scrutiny. As the Court stated in *Lubin v. Panish*, 415 U.S. 709 (1974) "Whatever may be the political mood at any given time, our tradition has been one of hospitality toward all candidates without regard to their economic status." *supra,* at 717-718.

Appellant argued that while the challenged statute is facially neutral, the regulation has a disparate impact on a given group, in this case the poor who lack education in the necessary computer skills to utilize the Secretary of State's electronic filing system. They will be burdened with excessive penalties that will keep them from running for public office. For instance, the Appellant, who is a poor person with $7,200. in income for the year 2016 is now burdened with late fees in the amount of $2,000. This will certainly keep the Appellant from running for political office again. This is discrimination that violates the equal protection clause. In *Manson v. Edwards,* 482 F. 2d 1076 (6th Cir. 1973) the 6th Circuit held:

> We believe the correct method of analysis for issues of this character is set forth in the recent decision in *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L. Ed.2d 92 (1972). In that case the Court determined that a state law that inhibited potential candidates for office from seeking their party's nomination because neither they nor the voters who supported them could pay a portion of the cost of conducting the primary, so discriminated against those candidates and the voters who wished to support them as to be violative of the equal protection clause. The Court noted that while the issue was essentially one of candidates' rights:
>
> "[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." 405 U.S. at 143, 92 S.Ct. at 856.
>
> In determining whether the effect on voters will be sufficient to mandate the stricter standard in a case essentially involving candidates' rights, the Court noted: "In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters." 405 U.S. at 143, 92 S.Ct. at 856. After determining that the size of the filing fees would discourage potential candidates, that many candidates would be forced to look to their supporters for assistance, and that the result of this would be to inhibit candidates favored by the less affluent and encourage the candidates supported by the rich, the Court held:
>
> "Because the Texas filing-fee scheme has a real and appreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate, we conclude, as in *Harper v. Virginia Board of Elections,* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966)],

> that the laws must be `closely scrutinized' and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster." 405 U.S. at 144, 92 S.Ct. at 856.

So according to precedent in both this Circuit and the Supreme Court, classifications based on economic factors are suspect when applied to candidates and this issue demands strict scrutiny.

D. The Requirement that Candidates File Electronically is a Literacy Test.

The Secretary of State's interpretation of MCFA § 169.218 creates a computer literacy requirement to run for and hold public office. The Appellant notes that neither the Magistrate nor the District Court ever directly dealt with this issue of a literacy requirement. The Appellant believes the Voting Rights Act of 1965 made literacy tests unconstitutional. Since *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) the Supreme Court has clearly adopted the position that literacy requirements with regard to voters are discriminatory and unconstitutional. A natural extension of this body of case law to candidates is rational. It certainly was not the intention of the Michigan Legislature in passing MCFA § 169.218 to exclude candidates who lack technological skills from running for public office. The Appellant asks the Court to address this argument since it has been ignored at the District Court level.

REQUEST FOR RELIEF

WHEREFORE the Appellant requests of this Honorable Court to REVERSE the District Court ruling and to provide the following equitable relief:

A. A permanent order requiring the Defendants to undertake the Recount requested by the Appellant in his Petition for Recount and prohibiting the Defendants, their respective

agents, servants, employees, attorneys, successors, and all persons acting in concert with each or any of them from refusing to undertake a recount in any precinct upon receiving a properly filed Petition for Recount and payment of the required fee from any candidate for any office in any election when a federal office is on the ballot;

B. A ruling holding that the Appellant only owes the Secretary of State $60. in late filing fees;
C. Costs and nominal damages;
D. Such other and further relief as this Honorable Court may deem necessary or proper.

CONCLUSION

For the forgoing reasons, the Appellant respectfully requests that the January 10, 2017 District Court Opinion and Order adopting the Magistrate Judge's Report and Recommendation as Modified and the August 1, 2017 District Court Opinion and Order adopting the Magistrate Judge's June 16, 2017 Report and Recommendation be REVERSED.

Respectfully submitted,

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Dated: October 18, 2017

CERTIFICATE OF COMPLIANCE

In accordance with F.R.A.P. 32(C)(i), Appellant Peter Bormuth, does hereby certify that his Appellant's Brief contains 9441 words according to the Microsoft Word program used to compose it.

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Dated: October 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2017 I did send my Appellant's Brief to John Fedynsky, Ass. Attorney General, P.O. Box 30736, Lansing, MI 48909 by regular mail.

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