

TABLE OF CONTENTS

	PAGES
Index of Authorities	I
Jurisdiction	1
Statements of Question Involved	2,
Statements of Facts	3,4,
Argument 1	7,8,9,10,11
Argument 2	11
Argument 3	11,12,13,14,15
Standard of Review	5
Statements of Argument 1	7
Statements of Argument 2	11
Statements of Argument 3	11

INDEX OF AUTHORITIES

<u>TABLE OF CASE</u>	<u>PAGES</u>
Anderson v. Liberty Lobby, Inc. et al 477U.S. 241, 250 (1986);	5
Auto Owners Ins v Allied Adjusters & Appraisers, Inc 238 Michigan App394, 397; 605 NW2d 685 (1999).	6,16
Beaty v Hertzberg & Golden, PC, 456 Mich 247, 253; 571 NW2d 716 (1997)	10,16
Beechnau v Secretary (1972) of State 42 Mich App 328, 330.	7,12,13,
Celotex Crop v Catrett 477 U.S. 317, 323 (1986)	5
Darling v Inter City (ON REM) 221 Mich App 521 (1997)	9,13,
Deleeuw v Board of State Canvassers, (2004)263 Mich App 497.	1,11
Fox v Board of Regent 375 Mich 238, (1965)	10,16,
Foy Norfolk and Western Railroad Co. 377 F2d 243,247 (1967).	12
Great Lakes Sales,Inc. V. State Tax Com'n (1992) 486 N.W. 2d 367, 194 Mich. App.271.	15
Griffin v. Michigan Civil Service Com'n (1984) 351 N.W. 2d 310, 134 Mich. App.413.	15

Kosmalski v St John’s Lutheran church March 04, 2004, No. 240663.	5
Leininger v Secretary of State 316 Mich Reports 644, (1947).	7
Maiden v Rozwood 461 Mich 109, 119; 579 NW2d 817 (1999)	6,16,
Marlo Beauty v. Farmers Ins, 227 Mich App 309(1996)	5
Thompson v. Secretary of State 192 Mich Reports 512 (1916)	9
Tryc v Michigan Veterans’ Facility 451 Mich 129, 136: 545 NW2d 642 (1996)	7,13
Quinto v Cross & Peters Co, 451 Mich 358; 547 NW2d 314 (1996).	6
Ritchie-Gamester v City of Berkley, 461 Mich 73,76, 579 NW2d 517 (1999).	5
Spiek v Dep’t of Transportation, 456 Mich 331,337; NW2d 201 (1998).	5
White-Bey v Dept of Corrections, 239 Mich App 221, 223-224; 608 NW2d 833 (1909)	11,16 7, 10,
West Ottawa Educ. (1983) 337 N.W. 2d 533, 126 Mich. App.306	14
<u>MICHIGAN COURT RULES</u>	
MCR 2.113 (G)	8,10,11,15
MCR 2.116 (C) (4), (8), (9), (10)(D), (G)(4)(5)(I)(1)(2)	1,5,6,

MCR 7.201 (B) (3)		12
MCR 2.209	1	
MCR 7.205 (B) (3)		12
MCR 7.212 (G) (I)		12
 <u>Michigan Statute</u>		
MCLA 750.505		11
MCLA 750.5855		11
 <u>MICHIGAN ELECTION LAWS</u>		
MSA 3.560(101)		12,13
MSA 6.1479		9,12,13,
MSA 6.149	9	
Michigan Election Law 168.476		1013
Michigan Election Laws 168.31 (8)	9,	
Election Law 168.479		7,9,12,13
MCLA 24.201		12,13,
MCLA 24.304 104 (1) (2)		14
APA 24.264 Sec.64		11
 <u>ATTORNEY GENERAL OPINION</u>		
Op. At Gen 1955-56 No. 2256. P163,		8,9,
Lotteries-Constitution Amendment Petition Legislature-State Board of Canvassers No. 1802 July 26, 1954 Atty.Gen.Op		9
No. 1802 July 26, 1954 Atty. Gen. Opin OP. Atty. Gen 1966, No 4551, p384		9,10,
Attorney General, Mike Cox Opinion July 15, 2005		7,13,
 <u>CONSTITUTIONS</u>		
Article 1 section 1		1,
Article 1 section 2		1

Article 1 section 3	1
Article 1 section 17	1
Article 6 Section28	12
<u>MICHIGAN COURT OF APPEALS MANUAL</u>	
page 31	12

STATEMENT OF JURISDICTION

Under MCR 7.212 (G), and 2.116 (C) (4), (8), (9), (10), (D) and (G) (4), (I) (1), (2), the Court of Appeals has jurisdiction as a matter of right and public interest, and Article 1 section 2, 3, and 17 of the Constitution of the State of Michigan.

The respondents, Carl Williams, Hassan Aleem, and Percy Harris Jr. are all residents, taxpayer electors and citizens of the State of Michigan.

This issue before this court is a matter of great public interest that affects us immensely, by illegally stripping us of our protective civil rights. We are the subjects of the Michigan Civil Rights Initiative Committee petitions and a mandamus in this matter will impair or impede the ability to protect our interest, unless we are adequately represented and in this case, not represented at all. We will suffer immensely and turn back the hands of time of the opportunity to advance as a people of color, a concrete and particularized invasion of a legally protected interest, if we do not intervene. **Deleeuw v Board of State Canvassers 263 Mich App 497.**

STATEMENT OF QUESTION INVOLVED

1) WHETHER OR NOT PLANITIFF HAD
OTHER REMEDIES AVAILABLE?

PLANITIFF SAID NO

COURT SAID UNDECIDED

RESPONDENT SAID YES

2) WHETHER THE ATTORNEY GENERAL HAS
COMMITTED FRAUD ON THE PEOPLE AND
THE STATE BOARD OF CANVASSERS?

PLANITIFF SAID NO

COURT SAID UNDECIDED

RESPONDENT SAID YES

3) WHETHER OR NOT THE MANDAMUS SHOULD
BE DISMISSED OR THE COURT LACK JURIS-
DICTION?

PLANITIFF SAID NO

COURT SAID UNDECIDED

RESPONDENT SAID YES

STATEMENT OF FACTS

The Michigan Civil Rights Initiative Committee filed petitions to eliminate all minorities rights and benefit under Civil right Act. The Secretary of State reviewed these defective petitions and refused to decertify the petition and pasted them on the Board of Canvassers to be approved. The Michigan Civil Rights Initiative Committee had a meeting with BAMN whom challenged those petitions for fraud and misrepresentation at the Board of Canvassers on July 15, 2005.

Two of the respondents, Carl Williams and Hassan Aleem travel two Lansing and reviewed the petition to find out that the petitions did not have an affidavit attached to them or otherwise, in violation of the Michigan State Constitution. Also the circulations did not live in the county that they were collecting signatures that required by the Michigan Election Statute.

We also reviewed the transcripts of the July15, 2005 meeting and found out that the Board of Canvassers, BAMN, and other citizens were lied to and misled by the Attorney General representatives and the Secretary of State representative were present and went along with this deception. As a result the Board of Canvassers vote was tied, and barred the petitions from being certified. The Michigan Civil Rights Initiative Committee Filed a Writ of

Mandamus in this Court of Appeals contrary to the Statute.

STANDARD OF REVIEW

The Michigan Court Rule 2.116 (4), (8), (10) (G) (4) and (I) (1) and (2) govern Summary Disposition and provides a party may move for dismissal of or judgment on all or part of a claim in accordance with this rule.

A party seeking summary judgment and/or disposition always bears the initial responsibility of informing the district and/or circuit court of the basis for its motion, and identifying those portions of “the pleadings, deposition, answer to interrogatories, and admissions on file, together with affidavits, if any,” which it believes demonstrate the absence of genuine issue of material fact. See *Celotex Corp v Catrett* 477 U.S. 317, 323 (1986) citing *Anderson v. Liberty Lobby, Inc. et al* 477 U.S. 241, 250 (1986); *Marlo Beauty v. Farmers Ins*, 227 Mich App 309; *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; NW2d 201 (1998).

The court’s ruling on motion for Summary Disposition/Judgment is de novo. *Kosmalski v St John’s Lutheran church* March 04, 2004, No. 240663, citing, *Spiek v Dep’t of Transportation*, supra. The trial court must consider the submitted evidence in the light most favorable to the nonmoving party. MCR 2.116 (G) (5): *Ritchie-Gamester v City of Berkley*, 461 Mich 73,

76, 579 NW2d 517 (1999); Maiden v Rozwood, 461 Mich 109,120-121;597 NW2d 817 (1999) Where the proffered evidence fails to establish that a disputed material issue and/or genuine issue, regarding any material fact, remains for trial, the moving party is entitle to judgment as a matter of law. MCR 2.116 (C) (10), (G) (4). Quinto v Cross & Peters Co, 451 Mich 358; 547 NW2d 314 (1996). Maiden v Rozwood supra.(10), (G) (4), I (1), (2); Maiden, supra; Auto Owners Ins v Allied Adjusters& Appraisers, Inc 238 Michigan App394, 397; 605 NW2d 685 (1999).

INCORPORATED BRIEF

ARGUMENT 1

1) WHETHER OR NOT PLANITIFF HAD OTHER REMEDIES AVAILABLE?

1) The Respondents, Planitiff, Attorney General and the Secretary of State all agree on the first remedy, that in accordance to **Michigan Election Law 168.476** in part states:

(a) Upon receiving notification of the filing of the petition, the board of State Canvassers **shall** canvass the petition to ascertain if the petitions have been signed by the requisite number of qualified and registered electors. The qualified voter file may be used to determine the validity of petition signatures by verifying the registration of signers and the genuineness of signatures on petition when the qualified voter filed contains digitized signatures. If the qualified voter file indicates that, on the date the elector signed the petition the elector was not registered to vote, there is a rebuttable presumption that the signature is invalid. See **Leininger v Secretary of State 316 Mich Reports 644, (1947) Beechnau v Secretary of State 42 Mich App 328, 330 (1972)**

The Respondents, Plaintiffs, Attorney General, Mike Cox, and Secretary of State agreed that the Board of Canvassers can have the city clerk check the signature on the petition with the signature, against the registration records of any political subdivision shall cooperate fully with the board in determining the validity of doubtful signatures, by rechecking the signature in an expeditious and proper manner.

However, the Attorney General has conveniently deceived us by leaving out the rest that is underlined, because the Board never got that Opportunity to recheck the signatures, due to the Planitiff premature and hasty Writ of Mandamus. **See Op. Atty. Gen. 1955-56, No. 2256, p 163.**

(b) The Attorney General also on page 9 nine of his brief states there is essentially no difference between a forged signature and the signature of a person from whom the purpose of the petition has been concealed and stated “quote” “To hold otherwise would allowed the petition requirement to be a sham.” I agree although ,Mike Cox, the Attorney General and Secretary of State, Terri Lynn Land has perpetrated fraud on the public by concealing the facts that the Michigan Civil Rights Committee Petitions do not meet the Constitutional, nor the Statutory requirement. He and the Secretary of State, Terri Lynn Land knowingly, willingly, wantonly, and with malice aforethought conspired with the Michigan Civil Rights Committee, through their dereliction of his duty with the intend to defraud the Board of Canvassers and the People of the State of Michigan, by continuing to insist the petitions are sufficient . Both have been notified and aware of this, since August 26, 2005 for the Attorney General and August 27, 2005; for Secretary of State see exhibit B of the response to the Writ of Mandamus,

citing “Law of the Land” Michigan Supreme Court case Thompson v. Secretary of State 192 Mich Reports 512 and in his own Opinion dated as early as July 15, 2005, plus Lotteries-Constitution Amendment Petition-Legislature-State Board of Canvassers No. 1802 July 26, 1954 Atty Gen. Opinion.

c) The Secretary of State, Terri Lynn Land of the State of Michigan has refused to look at the salient facts or she looks at it, with a glass eye with blinders, **because she missed the most obvious** in that, there were no affidavits of the circulator of the petition to determine the authenticity of the petitions.

The Secretary of State duty is to ascertain if such petitions are in **legal and proper form** and have the requisite number of signatures. **Op. At Gen 1955-56 No. 2256. P163**, therefore, has refused to carry out her duty, obligation, and has failed to act thus, misfeasance and nonfeasance of her office.

Michigan Election Laws 168.31 (8) requires her “to investigated, or cause to be investigated by local authorities, the administration of election laws and to report violations of the election laws and regulations to the

attorney general or prosecuting attorney, or both for prosecution. **OP. Atty. Gen. 1966, No 4551.p384**

d) The Attorney General, Mike Cox and Secretary of State, Terri Lynn Land, once they became aware that those petitions were in violation of the statutory and constitutional requirements, they had a self-regulating duty and obligation to uphold the law despite of their support for those petitions and has abandoned their Oath of Office.

2) The second remedy that did not happen; due to the Petitioner/Plaintiff inability to wait and allow the ordinary procedures to take its course is they can conduct hearing that was the second remedy in accord to Michigan Election Laws 168.476 as stated:

“Said board may hold hearings upon any complaint filed or any purpose deemed necessary by said board to conduct investigations of said petitions, and to conduct said hearings said board shall have the power issue subpoenas and to administer oaths. See **Atty. Gen. Op to Honorable Leon Drolet July 15, 2005, on page 4 exhibit A.**

a) The Attorney General, Mike Cox stated on page four (4) of his brief, that this was a meeting and a transcript of the meeting should this Court wish to review the Board's discussion, not a hearing that the second (2) remedy or a rechecking the signatures that was the third (3)remedy to

determine the authenticity of the signature has not been conducted, the fourth 4th remedy was a request for a Declaratory Ruling, and if the agency denied or failed to act expeditiously a Declaratory Judgment could be file in the circuit court where Claimant resides in accordance to **APA 24.264 Sec.64**, which are the State Board of Canvassers“ministerial duties,” as provided by the statute and the Attorney General own opinions; thus, the Michigan Civil Rights Committee and the Attorney General, Mike cox has failed to allow the exhaustion of administrative remedies. **See Deleeuw v Board of State Canvassers 263 Mich App 497, citing White-Bey v Dept of Corrections, 239 Mich App 221, 223-224: 608 NW2d 833.**

ARGUMENT 2

WHETHER THE ATTORNEY GENERAL HAS COMMITTED FRAUD ON THE PEOPLE AND THE STATE BOARD OF CANVASSERS?

The Attorney General has withheld information to conceal the truth to commit fraud on the people of the State of Michigan and the State Board of Canvassers through **violation of MCLA 750. 5855 and obstruction of Justice MCL 750. 505:** by not allowing the State Board of Canvassers to continue ordinary procedure process to have hearing and to recheck the

authenticity of the signatures. That this fraud is demonstrated and adopted by reference of Statements and Arguments one (1) and two(2)above as provided by **MCR 2.113(G)**. Whether inadvertently because of incompetent or intentionally because of malice the consequence is the same. If they did not know, they should have known. **Foy Norfolk and Western Railroad Co. 377 F2d 243,247 (1967)**.

ARGUMENT 3

WHETHER OR NOT THE MANDAMUS SHOULD BE DISMISSED OR THE COURT LACK JURISDICTION?

3) The Petitioner/Planitiff has failed to conform to the **MCR 7.201(B) (3) and 7.205 (B) (3)** and the Michigan Court of Appeals Manual on page 31 that states:

If an appeal is from an administrative tribunal or agency, or from the circuit court on review of an administrative tribunal or agency has been requested to send its record to the court of appeals.

If you omit the transcript the clerk's office in the court of Appeals will send you a letter explaining what is defective about your filing and give 21 days to correct it, therefore, the 21 days has expired and there is no record of transcript being filed or a request to send for record and should be dismissed and/or strike the nonconforming Brief as provided in **MCR 7.212 (I)**

a) The method of review for those persons aggrieved by any determination of the State Board of Canvassers in a matter of initiative is provided for by the statute governing initiative and referendum and the Administrative actions apply absent a showing that a private right or license is affected Const 1963, Art 6 section 28 MCLA 24.201 et seq. 168.479 Beechnau v Secretary of State supra.

Since the action requested a writ of mandamus it is incumbent on the Plaintiff to demonstrate a violation of a clear legal duty on the part of the defendants. **The Administrative Procedure Act, MCLA 24.201; MSA 3.560(101) et seq**, is not applicable since **MCLA 168.479; MSA 6.1479** provides the method of review for those persons aggrieved by **any determination** of the State Board of Canvassers, **If the language of a statute is clear and unambiguous the plain meaning of the statute reflects the legislature intent and judicial construction is not permitted Darling v Inter City (ON REM) 221 Mich App 521 1997, citing, Tryc v Michigan Veterans' Facility 451 Mich 129, 136: 545 NW2d642 (1996).**

Any person or persons, feeling themselves aggrieved by any determination reviewed by mandamus, certiorari, or other appropriate remedy in the supreme court, Michigan Election Law 168.479

The Administrative Procedure Act 24.301 Sec101 explain's A preliminary, procedural or intermediate agency action or ruling is not immediate reviewable, except that the court may grant leave for review of

such action if review of the agency's final decision or order would nor provide an adequate remedy. The Claimant never requested leave form the Court, therefore, has **violated the Administrative Procedure Act.**

b) The meeting was held July 19, 2005 and the Claimant was in court August 2, 2005, a total of 14 days and in according to the **Statute 24.304 Sec. 104 (1)** A petition shall be filed in the court within sixty (60) days after the date of mailing notice of the final decision or order of the agency, or if a rehearing before the agency is timely requested, within 60 days after delivery or mailing notice of the decision or order thereon.

Within 60 days after service of the petition, or within such further time as the court allows, the agency shall transmit to the court the original or certified copy of the entire record of the proceedings, unless parties to the proceedings for judicial review stipulate that he record be shortened. **APA 24.304 Sec.104 (2).** There is no stipulation of record and the required 60 days had not expired for the Board to complete or carry out it's ministerial duties, therefore, Plaintiff) was premature and have acted arbitrary without any legal principle, **contravened the APA.**

Judicial review of administrative decision involves review of the whole

record, not just those portion which support agency's findings. **West Ottawa**

Educ. (1983) 337 N.W. 2d 533, 126 Mich. App.30

When reviewing whether agency's decision was supported by competent, material, and substantial evidence on the whole record, court must review entire record and not just the portion supporting agency's findings, **Great Lakes Sales, Inc. V. State Tax Com'n (1992) 486 N.W. 2d 367, 194 Mich. App.271**. Al though, in this instance it was Plaintiff)

Where material issues remain unresolved by lower tribunal, court of review, if it reverses, may remand the case for resolution of those issues, except where the record is well enough developed for the court of review to reach a conclusion on the unresolved question and the unresolved question is purely one of law or the lower tribunal has sufficiently fulfilled its fact finding function to permit the court of review to reach a determination. **Griffin v. Michigan Civil Service Com'n (1984) 351 N.W. 2d 310, 134 Mich. App.413**.In this case the Plaintiff) have capriciously disregard procedures, respondent rights, other electors that was at the meeting, those that were the victims of the misrepresentation, fraud, and other available remedies the Plaintiff) action is also premature at best, due to above statements and Arguments 1-3 we adopted by reference as provided by **MCR 2.113(G)**.

Respondent further states “ A court which has no jurisdiction should not proceed further except to dismiss the action. **Fox v Board of Regents 375 Mich 238, (1965).**

In view of the above facts and law the respondents has shown that, there are no genuine issue as to any material fact or relevancy in dispute and this case is ripe for” Summary Disposition/Judgment.” **See White-Bey v Corrections Dept 239 Mich App 221 (1999) citing Beaty v Hertzberg & Golden, PC, 456 Mich 247, 253; 571 NW2d 716 (1997) Where the proffered evidence fails to establish that a disputed material issue and/or genuine issue, regarding any material fact, remains for trial, the moving party is entitle to judgment as a matter of law. MCR 2.116 (C)) (10), (G) (4). Quinto v Cross & Peters Co, 451 Mich 358; 547 NW2d 314 (1996). Maiden v Rozwood supra.(10), (G) (4), I (1), (2); Maiden, supr; Auto Owners Ins v Allied Adjusters& Appraisers, Inc 238 Michigan App394, 397; 605 NW2d 685 (1999).**

WHEREFORE, and the above statement of facts and law we prays that relief will be granted and the request for Mandamus will be denied, dismissed, and/or strike the brief for nonconforming to the rules.

Sign_____

Carl Williams
10112 Somerset
Detroit, Michigan 48224
(313) 521-5012

Sign_____

Percy Harris Jr
1516 Englewood
Royal Oak Michigan 48
248-259-0860

Sign_____

Hassan Aleem
2440 Taylor
Detroit, Michigan 48206
313 205-4353

Sign _____

Subscribed to and sworn to before me

This _____ Day of August 2005

My Commission expires on _____

Notary Public

That the Writ of Mandamus applied for by the Plaintiff) do not meet the statutory or case law requirements. That there were other available remedies available and the application for Writ does not meet the mandatory requirement to be grant.

That this court lack jurisdiction because the statute provides a remedy to the Supreme Court and other remedies as well provided by the Michigan Election Laws, thus the statutory and prerequisite remedies has not been exhausted and the Plaintiff) is not entitle to the Writ of Mandamus in according to law.

That I the affiant , if sworn as a witness, can testify competently to the facts stated in this affidavit and Motion for Summary Disposition.

Signed _____

Subscribed to and sworn to before me

This _____ Day of August 2005

My Commission expires on _____

Notary Public

STATE OF MICHIGAN
IN THE COURT OF APPEAL

Michigan Civil Rights Initiative
Plaintiff) / Petitioners

v

Case No. 264204

State Board of Canvassers
Defendant /Respondent

Carl Williams, Hassan Aleem and Percy Harris Jr
Third Party Interveners/Respondent

MOTION FOR SUMMARY DISPOSITION AND
INCORPORATED BRIEF AGAINST THE APPLICATION FOR
THE WRIT OF
MANDAMUS

EXHIBITS

A - Mike Cox Opinion to Honorable Leon Drolet, State Representative July 15, 2005, on the Michigan Election Laws. Also see plaintiff exhibit 1

B - Copies of two complaints filed one on the July 26, 2005, and another one filed August 23, 2005.

C - A copy of Plaintiff's/ Petitioner's Statement of facts on page 4 where he informed the court that this was a meeting, rather than a hearing.

F - Affidavit in support of Summary Disposition in opposition to Plaintiff Writ of Mandamus .

APPENDIX