

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT**

17TH CIRCUIT

**Brian Ebbers, Jeff Steinport, and Karen
Neal,**

Plaintiffs,

vs.

**The Secretary of State of Michigan, the
Attorney General of Michigan, and the
Kent County Prosecutor, in their official
capacities,**

Defendants.
_____ /

Docket No. 08-_____-CZ

Hon. _____

**MOTION FOR PRELIMINARY
INJUNCTION**

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Attorneys for Plaintiffs

Brian Ebbers, Jeff Steinport, and Karen Neal (“Plaintiffs”), through their attorneys the Witte Law Offices, state their motion for preliminary injunction of MCL 168.957 as follows:

1. This case arises out of Plaintiff Ebbers’ effort to exercise his right guaranteed under Michigan’s Constitution to recall state Representative Robert Dean from office. Const 1963, art 2, §8.

2. Mr. Ebbers has complied with all provisions of Michigan’s recall statutes, MCL 168.951, *et seq.*, to have recall petitions approved for circulation.

3. Mr. Ebbers is allowed 90 days to gather signatures. MCL 168.961(2)(d).

4. Mr. Ebbers wants assistance from petition circulators, including Plaintiffs Steinport and Neal, in gathering the required number of signatures to place the question of recall before voters. MCL 168.955 requires that the recall sponsor obtain valid signatures on recall petitions equal to not less than 25% of the number of votes cast for candidates for the office of governor at the last preceding general election in the electoral district of the officer sought to be recalled.

5. Circulating recall petitions is a form of speech, protected under both the Michigan and U.S. Constitutions. Const 1963, art 1, §5; US Const, Am I.

6. The statute in question, MCL 168.957, requires that petition circulators be registered voters within the district in which the recall is sought; the statute also imposes a criminal penalty for making a false statement in a petition certificate. The statute reads:

A person circulating a petition shall be a qualified and registered elector in the electoral district of the official sought to be recalled and shall attach thereto his certificate stating that he is a qualified and registered elector in the electoral district of the official sought to be recalled and shall state the city or the township wherein he resides and his post-office address; further, that signatures appearing upon the petition were not obtained through fraud, deceit, or misrepresentation and that he has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; that all signatures to the petition were affixed in his presence; and that to the best of his knowledge, information, and belief, the signers of the petition are qualified and registered electors and the signatures appearing thereon are the genuine signatures of the

persons of whom they purport to be. A person who knowingly makes a false statement in the certificate hereby required is guilty of a misdemeanor.

7. Plaintiffs Steinport and Neal want to circulate petitions but cannot do so because they live outside the district, and doing so would expose them to criminal prosecution.

8. Plaintiff Ebbers cannot gather the necessary signatures without the assistance of petition circulators who live outside the district.

9. Because petition circulation is a form of speech, which is owed the same protection as other forms of political speech, Plaintiffs' right to speak is unreasonably burdened by MCL 168.957's residency requirement.

10. Because the statute in question also violates the Commerce Clause as well as Plaintiffs' Privileges and Immunities, there is a substantial likelihood that Plaintiffs will prevail on the merits of their claim.

11. Without an injunction, Plaintiffs will be deterred from exercising their rights and, as a consequence, will suffer irreparable harm.

12. The threatened deprivation of Plaintiffs' constitutionally protected rights outweighs any harm the injunction might cause the state, which will be required to make no expenditures and take no actions to comply.

13. An injunction would advance the public interest in protecting free speech and recall rights, and protect the interests of the federal system.

WHEREFORE, Plaintiffs request that this Honorable Court enter an order enjoining Defendants from enforcing the provision of MCL 168.957 requiring petition circulators to be qualified and registered elector in the electoral district of the official sought to be recalled.

Further, Plaintiffs request that this Honorable Court consolidate the hearing on their motion with a trial on the merits.

Respectfully submitted,

**BRIAN EBBERS, JEFF STEINPORT,
AND KAREN NEAL**

Dated: _____

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