

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT DASCOLA,

Plaintiff,

vs.

Case No. 2:14-cv-11296-LPZ-RSW
Hon. Lawrence P. Zatkoff
Magistrate Judge R. Steven Whalen

CITY OF ANN ARBOR and JACQUELINE
BEAUDRY, ANN ARBOR CITY CLERK,

Defendants.

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**REPLY BRIEF IN SUPPORT OF PLAINTIFF'S POST-JUDGMENT MOTION
FOR ADDITIONAL INJUNCTIVE RELIEF**

DISCUSSION

Defendants do not even attempt to state an argument against granting the relief requested by Plaintiff. Instead, they pretend that they are bystanders to an alleged dispute between Plaintiff and the Bureau of Elections and ask this Court to provide “guidance to the parties on this issue.” The Motion is, essentially, unopposed and the relief sought should be granted.

The dispute remains between the Plaintiff and the Defendants, who say that they may or may not follow the “command” in a letter from the Bureau of Elections. Plaintiff argues that to follow that “command” would violate Plaintiff’s right to equal protection and cannot be allowed. Defendants, as well as the Bureau of Elections, completely ignore the equal protection issue at the heart of this case.

Defendants spend considerable effort to direct blame away from themselves and onto the Washtenaw County Clerk for the delivery of defective ballots to Ann Arbor Third Ward voters. It was, in fact, the City Clerk who, without inspecting them, delivered 392 defective ballots to absentee voters. This is more of a public relations effort by the Defendants than a serious attempt to address the important legal issues. Who is to blame is not one of those issues.

Defendants spend considerable time detailing how many defective ballots have already been returned, how many have been replaced and the Clerk’s predictions about how many voters will, in the end, send in only defective ballots. The Clerk’s predications, calculations and speculations are just that and are quite irrelevant. If even one defective ballot is counted, it could affect the outcome of the election, and this outcome must be precluded.

Defendants highlight the Director of Elections's concerns that some voters who return only defective ballots might be disenfranchised, citing no legal support for his concerns. He speculates that "there may be voters who would not change their vote on Ward 3 or will be out of town and unable to return the replacement ballot by Election Day." Any voter who returns a correct replacement ballot is certainly free to vote the same way the voter did on the defective ballot it replaces, so the Director's concern in this area makes no sense. As for persons who will be out of town until Election Day, it should be noted that the set of correct ballots was mailed just five days after the defective ballots.

The "ballot error" cases cited by Defendants are not on point, and even the Defendants say they are presented to the Court without a position on whether the Court should adopt the analysis in them. Plaintiff has no hesitation in saying that the Court should not adopt the analysis in them, as they shed no light on the present situation.

Plaintiff will not belabor the discussion of the Director of Elections's authority to direct local clerks in the performance of their duties, because it clearly does not extend to directing them to violate the right to equal protection of candidates. Plaintiff will only say that to read the applicable statutes as allowing the Director to dictate specific procedures to be followed, without reliance on any statutory or case law, rule or regulation, without any procedures for notice, hearing, etc. would be to stretch that authority beyond any reasonable limits.

CONCLUSION

Defendants have presented no arguments that would support a denial of the relief sought in the Motion, and it should be granted.

/s/ Thomas F. Wieder
Thomas F. Wieder (P33228)
Attorney for Plaintiff

Dated: July 10, 2014

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to the following: Stephen K. Postema and Abigail Elias.

/s/ Thomas F. Wieder
Attorney for Plaintiff