

**UNITED STATES DISTRICT COURT
IN THE 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.

Thomas Wieder (P33228)
Attorney for Plaintiff
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Office of the City Attorney
Stephen K. Postema (P38871)
Abigail Elias (P34941)
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**DEFENDANTS' RESPONSE AND BRIEF TO STATE OF MICHIGAN
SECRETARY OF STATE'S MOTION TO INTERVENE**

The City and the City Clerk concurred in the request to intervene filed by the Michigan Secretary of State. The City Clerk provides an affidavit attached as Exhibit 1 to demonstrate that the scope of this problem continues to diminish. As of the City Clerk's receipt of the mail on July 14, 2014, there currently are only 12 first ballots remaining for which a second replacement ballot has not been received.

Concerning the 12 remaining first ballots, 5 of these voters have indicated they will return the second replacement ballot and 1 of these voters indicated he would have his spouse return the replacement ballot. Only 3 first ballots have been received that appear to be dated after July 4, 2014. The ballots being returned are primarily the second replacement ballots. Of the 392 persons who received the second replacement ballots, 121 persons have already returned them.

Finally, because this is a state primary ballot, only those who choose to vote in the Democratic primary are at issue here; those voting on the Republican side of the ballot do not vote for the 3rd ward Democratic primary candidates at all. There is no way to tell if any of these first ballots have been returned by absent voters voting the Republican side of the primary ballot until they are processed on election day. (But there are no contested Republican primary races on the ballot.)

Dated: July 14, 2014

Respectfully submitted,

By: /s/ Stephen K. Postema
Stephen K. Postema (P38871)
Attorneys for Defendants
OFFICE OF THE CITY ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 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: Thomas Wieder; and I hereby certify that I have mailed by US Mail the document to the following non-ECF participant: None.

/s/Alex Keszler
Legal Assistant
Ann Arbor City Attorney's Office
City of Ann Arbor
301 E. Huron St., P.O. Box 8647
Ann Arbor, MI 48107-8647
(734) 794-6180

Exhibit 1: Affidavit of Jacqueline Beaudry, Ann Arbor City Clerk

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AFFIDAVIT OF JACQUELINE BEAUDRY, ANN ARBOR CITY CLERK

STATE OF MICHIGAN)
 :ss
COUNTY OF WASHTENAW)

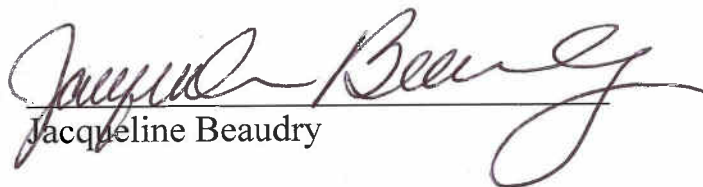
I, Jacqueline Beaudry, state as follows:

1. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, I am competent to testify to them.
2. I am the City Clerk for the City of Ann Arbor, and have been since April, 2005.
3. The City Clerk’s office sent first ballots to 392 absent voters on June 25, 2014.
4. On June 27, 2014, when I first learned of the error in the first ballot, I stopped sending the first ballot.
5. On June 30, 2014, I sent second replacement ballots to the 392 absent voters.
6. Since June 25, 2014 and through noon, Monday, July 14, 2014, the City has had 51 first ballots returned, but only 12 of those absent voters also have not returned the second replacement ballots.
7. Of the 12 absent voters who have returned only the first ballots, I have spoken with 5 of those persons by telephone; one of these persons also had a spouse who had submitted a first ballot only – and the person agreed to inform his spouse. I have contacted 1 voter in person. I have contacted 1 person by e-mail. I have left 4 voice mail messages.


8. Only 1 absentee voter who has returned a first ballot has yet to be further contacted, after they were sent second ballots with an explanatory letter. This is a resident who I have not yet obtained a home or personal phone number and who was not home when I attempted personal contact on July 11, 2014.
9. Additional efforts for this 1 voter will be undertaken by the City Clerk's office this week. Other efforts will also be undertaken by the Clerk's office as needed.
10. 5 of the absent voters contacted, as set forth in paragraph 5, volunteered that they would submit replacement ballots. And one voter indicated that his spouse would also return it.
11. Since July 7, 2014, the first day second ballots were received by the City Clerk; the City Clerk has received 123 replacement ballots from the 392 residents who were sent the first ballots, including those described above.
12. Based on the steps taken by the City Clerk's office since June 30, 2014, I currently estimate that the number of first ballots that will not be replaced with second ballots by election day will be less than 10. This is based on the fact that in the past week the number of first ballots now being received is minimal and I am calling the absent voters who return a first ballot or making other contact with them to request that they return replacement

ballots. Furthermore, this estimate is based on the fact that only 3 first ballots have been received that have an envelope dated after July 4, 2014; this indicates that residents who have both ballots are returning the replacement ballot, because during this time period 123 replacement ballots have been returned.

13. I swear and affirm that the above statements are true to the best of my information, knowledge and belief, formed after diligent examination of the books and records of the Clerk's Office.


Jacqueline Beaudry

Subscribed and sworn to before me
this 14th day of July, 2014.


Alex Keszler, Notary Public
Washtenaw County Michigan

ALEX KESZLER
Notary Public, State of Michigan
County of Washtenaw
My Commission Expires 08-31-2016
Acting in the County of Washtenaw