

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

STOP CITY INCOME TAX a/k/a SCIT,
a registered Ballot Question Committee;

S.A. TRUDY SWANSON,
individually and as Mayor Pro-Tem
of the City of Ypsilanti;

BRIAN ROBB,
individually and as an elected member
of the Ypsilanti City Council; and

PETE MURDOCK,
Individually and on behalf of SCIT,

Plaintiffs,

vs.

CITY OF YPSILANTI,

Defendant.

No. 07
Honorable

PZ

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There is no other civil action between these parties
arising out of the same transaction or occurrence
as alleged in this Complaint.

COMPLAINT AND DEMAND FOR INJUNCTIVE RELIEF

GENERAL ALLEGATIONS

1. Stop City Income Tax [hereinafter SCIT] is a Ballot Question Committee registered with the County of Washtenaw.

2. Stop City Income Tax was formed for the purpose of educating voters as to the detrimental effects of the City of Ypsilanti's income tax proposal, opposing the proposal, and raising money for the purpose of running a campaign against the proposal.
3. Brian Robb is a citizen and resident of Ypsilanti who was elected to the Ypsilanti City Council in November 2006, currently serving in the first year of his term.
4. Brian Robb is a member and supporter of SCIT.
5. Brian Robb publicly objected to the ballot language proposed by the City of Ypsilanti, voted against it while sitting as a member of City Council, and publicly and privately expressed reservations concerning compliance with the law prior to casting his vote. City Council and its attorneys failed to heed his concerns and warnings.
6. S.A. Trudy Swanson is Mayor Pro-Tem of the City of Ypsilanti, as well as a long-standing elected member of the Ypsilanti City Council.
7. Mayor Pro-Tem Swanson voted against the ballot language as proposed in her official capacity as a member of the Ypsilanti City Council.
8. Pete Murdock is a member of, supporter of, contributor to, volunteer for, and spokesperson for SCIT, as well as a former Mayor of the City of Ypsilanti.
9. Pete Murdock opposes the proposed income tax due to the likelihood that it will negatively affect property values, cause businesses and residents to leave the City of Ypsilanti, and unfairly impose a disproportionate burden on non-property owners with lower incomes (in particular those who live below the poverty line), as well as on students attending and others working at Eastern Michigan University.
10. Defendant, City of Ypsilanti, is a municipality in Washtenaw County operating pursuant to the provisions of its own charter and subject to the Home Rule City Act, MCLA 117.1 et seq.
11. On August 14, 2007, the Ypsilanti City Council, by a 4-3, simple majority vote, adopted Resolution 2007-178 (attached as Exhibit 1) for the purpose of putting Resolution 2007-178

before voters as a ballot proposal this November.

COUNT I: VIOLATION OF MICHIGAN'S ELECTION LAW, MCLA 168.485

12. Resolution 2007-178 violates MCLA 168.485, also known as Michigan's Election Law, which provides, in relevant part, that "The language used shall not create prejudice for or against the issue or proposal."
13. Resolution 2007-178 creates prejudice in favor of the proposal by intentionally failing to define key terms and failing to set forth the implications of key phrases in the proposal as listed below:
 - a. The ballot language fails to explain that the millage rollback enacted by City Council is not part of the ballot proposal, not subject to a vote by the public, and can be repealed at any time by a simple majority vote of City Council;
 - b. The term "exemption" is not defined, nor is it made clear the implication or meaning of this term, which will lead many voters to conclude that they will not have to pay if their tax liability is \$1,000 or less. To the contrary, this "exemption" provides a mere \$10 diminishment of tax liability, a key fact that is neither spelled out anywhere in the proposal, nor explained by the proposed language;
 - c. The ballot language fails to define the phrase "other qualifying sources of income," thereby suggesting that more income may be exempt from taxation than is actually the case. For example, though the proposal suggests situations in which taxpayers may be "exempt," it fails to list situations that are not exempt, such as the unearned income of minor children generated by savings set aside for college.
14. Resolution 2007-178 runs contrary to a recent, binding, reported Court of Appeals case, Citizens for Protection of Marriage vs. Board of State Canvassers, 263 Mich.App. 487 (2004), in that by listing some of the possible consequences of adoption of the ballot proposal while omitting others, the ballot language creates an implication that what is included is meritorious and that what is not included is less meritorious or non-meritorious. This is precisely why Citizens for Protection of Marriage, *supra*, prohibits the one-sided listing of speculative effects of ballot proposals, particularly those proposed under the auspices of "voter education."
15. Resolution 2007-178 runs afoul of both Citizens for Protection of Marriage, *supra*, and MCLA 168.485, both of which prohibit, among other things, speculation as to the future effect of a

ballot proposal, if adopted, in the following particulars:

- a. The ballot language speculates by its attempt to project future revenue;
- b. The ballot language speculates by its attempt to project future expenditures;
- c. The ballot language speculates by its attempt to predict future service cuts in the event the proposal is not adopted.
- d. The ballot language speculates by its attempt to predict future revenue in the event the proposal is adopted.

16. On Tuesday, September 18, 2007, the Ypsilanti City Council adopted yet another resolution (Resolution 2007-204, attached as Exhibit 2), the current and future effect of which causes the ballot language as previously adopted to now be false, misleading, and inaccurate.
17. Resolution 2007-204, adopted on Tuesday, September 18, 2007, by a 5-1 vote, directed the Ypsilanti City Manager to keep the City of Ypsilanti's fund balance at 10%.
18. As a consequence of the adoption of Resolution 2007-204, the ballot language as proposed is no longer accurate, since even if the City Income Tax proposal is adopted by voters, substantial cuts to save hundreds of thousands of dollars would be required as early as Fiscal Year 2011 to maintain a 10% fund balance, even assuming that the City Manager's current projections are correct.
19. Consequently, the proposed ballot language purporting to state that "revenue from the proposed income tax would allow current service levels until at least fiscal 2012" is no longer true, as such projections will now require, under the terms of the new resolution, per current City of Ypsilanti projections, a budget reduction of about \$350,000 in Fiscal Year 2011 and a further budget reduction of approximately \$2 Million in Fiscal Year 2012.
20. Permitting the proposed ballot language to be placed before voters now, following adoption of Resolution 2007-204, actively and intentionally misleads voters, as the statements contained therein, despite their other defects, are no longer even arguably true.

21. The City of Ypsilanti is not permitted to mislead voters by purporting to adopt ballot language, and then adopting other resolutions that cause the language of the ballot proposal be inaccurate.

COUNT II: VIOLATION OF MICHIGAN'S HOME RULE ACT, MCLA 117.21

22. Resolution 2007-178 also violates MCLA 117.21(5), which expressly requires that “Propositions and questions shall be proposed, initiated, submitted and canvassed in a manner *similar to that provided for charter amendments.*” (Emphasis added).

23. MCLA 117.21(1) requires that charter amendments receive a 3/5 vote of City Council prior to placing them before voters, yet the ballot language for the income tax proposal failed to garner 3/5 of available votes from City Council. To the contrary, City Council obtained only 4 of 7 votes in favor of placing the ballot proposal before voters, which constitutes less than 3/5 as a matter of mathematical reality and as a matter of law.

REQUEST FOR INJUNCTIVE RELIEF

24. Because of the violations of the statutes listed herein and the case law as set forth above, Plaintiffs request injunctive relief from this Court by asking the Court to declare the ballot proposal invalid, order the Washtenaw County Clerk to withhold the ballot language as proposed and otherwise stop the violative, biased, prejudiced, unfair, inaccurate, and untrue ballot language from being placed before voters.

25. In the alternative, Plaintiffs request that the Court amend the ballot language to correct the violations, and cure the language by removing any bias, prejudice, speculation and inaccuracy.

26. Plaintiffs further request that the Court order reimbursement of actual costs and attorneys fees expended as a result of the violative actions of the Ypsilanti City Council for its attempt of wrongfully placing biased, prejudiced, misleading, inaccurate and speculative ballot language before voters.

WHEREFORE, Plaintiff request that this Court enter an injunction and provide declaratory relief by enforcing the provisions of MCLA 117.21 and MCLA 168.485 and applicable case law to which the Court is bound to follow and uphold providing as follows:

- a. The ballot language as proposed shall not be submitted to voters as it is currently worded;
- b. The Ypsilanti City Council has not obtained the minimum 3/5 vote necessary to place the proposal before voters in any form;
- c. Plaintiffs are entitled to attorneys fees and costs for having to bring an action to enforce clear and unambiguous statutory provisions pursuant to MCLA 600.2421c and the common law as set forth herein above.

Respectfully Submitted,

McKEEN & ASSOCIATES, P.C.

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