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Feb. 5, 2016

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Civic, Education Leaders Win Preliminary Injunction against Michigan ‘Gag Order’ Law

ANN ARBOR, Mich. – U.S. District Court Judge John Corbett O’Meara today issued a preliminary injunction to stop the enforcement of a “gag order” provision in Public Act 269 that unconstitutionally was keeping school district and local government officials from communicating with voters before the March 8 election.

“Public officials deserve clarity on this issue so that they may serve the public in the normal course without fear of arbitrary sanction or prosecution,” O’Meara wrote in his decision. “This matter is best resolved through the legislative process, with due deliberation and debate. Given the fast approaching March 8, 2016 elections, however, time is of the essence and the court must act.”

More than 100 school districts and local governments with issues on the March 8 ballot were being harmed by Subsection 57(3) of Public Act 269, which bans local officials or employees of local governments and school districts from using public resources to communicate with voters within 60 days of an election by giving them factual information about a ballot measure through radio, television, mass mailing or prerecorded telephone messages in the final two months of an election.

State law already prohibits governmental officials from using tax dollars to advocate for or against a proposal. The Michigan Department of State over a three-year period found only five valid complaints where local entities violated the state law forbidding them from advocating for a ballot issue.

Plaintiffs contended the new gag order went far beyond what is constitutionally permissible, violating their First and 14th Amendment rights. O’Meara issued the injunction one day after hearing arguments at the U.S. District Court, Federal Building in Ann Arbor.

“We’re grateful that Judge O’Meara recognized the irreparable harm that Section 57(3) was causing communities and voters,” said Jerome R. Watson of Miller Canfield, who argued for the 18 plaintiffs Thursday.

Multiple organizations are opposed to Section 57(3) of PA 269, including the Michigan Municipal League, Michigan Association of Counties, Michigan Townships Association, Michigan Infrastructure & Transportation Association, Michigan Association of School Administrators, Conference of Western Wayne, Michigan Association of School Boards, and Michigan Association of Intermediate School Administrators. The groups have consistently called for a repeal of the gag order provision in PA 269.

“We are pleased that Judge O’Meara concurs with local government organizations that public officials deserve clarity in state law, and the ability to communicate factual information about local ballot proposals,” said Larry Merrill, Michigan Townships Association executive director. “Local officials are the best source of information about local matters, and voters are entitled to – and expect – their local officials to fully explain the ramifications of these often-complex issues. Michigan residents deserve nothing less.”

Dearborn Mayor Jack O’Reilly, president of the Michigan Municipal League board, added: “Today’s ruling in support of a preliminary injunction is confirmation of what we’ve been saying all along, which is that this law was overreaching and attempted to solve a problem that didn’t exist.”

The language in the offending section was added to Senate Bill 571 at the last minute and passed in the middle of the night without a public hearing. Those filing the lawsuit argued that it essentially kept local government and school officials from giving voters the information they need to make informed decisions, something O’Meara seemed to fear could happen without the injunction.

“One could arguably find a communication that ‘references’ a ballot question to be any communication that merely ‘mentions’ a ballot question,” O’Meara wrote in his decision. “This result appears absurd; it is difficult to imagine that regulators would attempt to sanction or prosecute a public official for merely mentioning a ballot question in a city newsletter, explaining the difference between a millage renewal and millage increase, or explaining what ‘non-homestead’ means, for example.”

The public officials listed as plaintiffs are: Roseville Mayor Robert Taylor; Algonac City Manager Douglas R. Alexander; Dowagiac Mayor Donald Lyons; Tuscola County Commissioner Matthew Bierlein; New Haven Community Schools Superintendent Todd R. Robinson; Riverview Community Schools School Board President Gary O’Brien and Superintendent Russell Pickell; Tecumseh School Board President Kimberly Amstutz-Wild and Superintendent Gary O’Brien; Waterford School District School Board President Robert Seeterlin and Superintendent Keith Wunderlich; Goodrich Area Schools Superintendent Michelle Imbrunone; Clinton Community Schools Superintendent David P. Pray; Byron Area Schools School Board President Amy Lawrence and Superintendent Patricia Murphy-Alderman; Warren Consolidated School District Superintendent Robert D. Livernois; Lansing School District Superintendent Yvonne Caamal Canul; and Stephen Purchase, a private citizen.

Secretary of State Ruth Johnson and the State of Michigan are listed as defendants.

Robert Taylor et al v. Ruth Johnson and the State of Michigan was filed Jan. 26 in the U.S. District Court for the Eastern District of Michigan, based in Detroit.