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## **Civic, Education Leaders File Lawsuit Saying 'Gag Order' Law Violates U.S. Constitution**

### ***More than a dozen individuals join fight against SB 571/PA 269***

**LANSING, Mich.** – Local government officials and school officials today filed a lawsuit in federal district court in Detroit charging that a “gag order” provision in Public Act 269 is unconstitutional and asking that the law be rejected.

Subsection 57(3) of Public Act 269, which amended Michigan’s Campaign Finance Act, prohibits elected and appointed public and school officials from providing factual information to voters about local ballot measures within 60 days of an election. State law already prohibits governmental officials from using tax dollars to advocate for or against a proposal. This new gag order goes far beyond what is constitutionally permissible.

More than 100 school districts and local governments with issues on the March 8 ballot already are being harmed by the new law, which bans local officials or employees of local governments and school districts from using public resources to communicate with voters 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.

The result will be that uninformed voters are likely to first learn about complex matters when they look at ballots on election day without having received basic information such as what the proposal is about, how much it will save or cost them and what the consequences of a yes or no vote are. In addition to being unconstitutional, the law will also negatively affect local credit ratings and result in higher costs for local taxpayers, Moody’s Investors Service has warned.

“It’s an absolute gag order preventing public officials from addressing their constituents and residents about matters of local concern,” said Scott Eldridge, an attorney with Miller, Canfield, Paddock and Stone who has filed the lawsuit against Public Act 269. “It’s so overly broad and vague that it penalizes public officials with a crime if they speak in even an objectively neutral tone about ballot issues.”

When he signed Senate Bill 571 into law on Jan. 6, Gov. Rick Snyder agreed Section 57 went too far and called for a fix. However, only one legislative hearing has been held so far, and legislation discussed at the hearing – House Bill 5219 – allows only the date of the election and the 100-word ballot language to be sent to voters by local officials. Bipartisan bills to repeal the unconstitutional language in Public Act 269 haven’t received even one hearing.

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.

“This gag order is a heavy-handed solution to a problem that barely exists,” said Michigan Municipal League President Jack O’Reilly, mayor of Dearborn. “With so many communities essentially locked out of telling voters about issues on the March 8 ballot because of this bad

law, we no longer could wait on a legislative fix.”

Eldridge said the draconian language added to Senate Bill 571 at the last minute and passed in the middle of the night without a public hearing violates both the First and the 14<sup>th</sup> Amendments of the U.S. Constitution. He added that the vagueness of the law’s language essentially stifles public officials’ right to free speech.

“As elected officials, we have the right to let the voters who placed us in office know about important elections affecting their future, whether that’s a funding issue, a question of combining services with neighboring communities, supporting libraries and parks or improving public buildings,” said Tuscola County Commissioner Matthew Bierlein, one of the plaintiffs in the lawsuit. “This law keeps voters from getting the information they need to make informed decisions.”

Moody’s Investors Service warned last week that preventing school districts and local governments from communicating with voters about ballot issues could hurt their credit ratings in the future, essentially making it more expensive for them to finance local projects such as new school buildings. School districts would be especially vulnerable because they must hold periodic operating millage elections to renew the 18-mill property tax on commercial and industrial property.

“A school district’s restriction on providing information in the 60 days prior to the vote will prevent it from using public funds to inform voters that the tax burden will not fall on most of them,” Moody’s said.

Warren Consolidated Schools Superintendent Robert Livernois said his school district may not be able to let voters know anything about a March 8 operating millage election if either the lawsuit or a legislative repeal doesn’t resolve the issue soon.

“Our hands are totally tied as far as mailing out information to voters or telling them about the upcoming election by using radio, TV or telephone calls,” Livernois said. “It’s critical that this situation be corrected as soon as possible.”

The public officials listed on the lawsuit 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; Superintendent of Goodrich Area Schools 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.

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

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