

Valid Recall Signatures

Davenport v. County of Genesee
 (Arthur J. Tarnow, E.D. Mich. 2:10-cv-13503)

When it was determined that a petition to recall the mayor of Flint, Michigan, did not have enough valid signatures to qualify for a recall election, the recall campaign filed an action in state court challenging how signatures were invalidated. The county removed the action to federal court, which denied a preliminary injunction fifteen days after the case was removed.

Subject: Recall elections. *Topics:* Getting on the ballot; case assignment.

On August 31, 2010, the Committee to Recall Dayne Walling, the mayor of Flint, Michigan, learned that it had not submitted enough valid signatures to place the recall of Mayor Walling on the November 2 ballot.¹ That day, the Committee filed an action in Genesee County’s circuit court seeking to place the recall on the ballot.² Because the complaint included federal constitutional claims, the county removed the action to federal court in Detroit on September 2.³ The committee moved on September 3 for a preliminary injunction.⁴

The court assigned the case to Eastern District of Michigan Judge Sean F. Cox, but he was out of town, so Judge Arthur J. Tarnow handled preliminary matters.⁵ Judge Tarnow handled all emergency cases the same: he waited until the other side was served before he conducted a proceeding.⁶ A law clerk or case manager typically communicated with the parties to set up the first proceeding.⁷

Judge Tarnow set a hearing on the injunction motion for September 9.⁸ He also held hearings on September 10 and 14.⁹ On September 17, Judge

1. *Davenport v. Genesee County*, 737 F. Supp. 2d 809, 811 (E.D. Mich. 2010) (noting that of over 14,000 signatures submitted 7,484 were determined to be valid, which was fewer than the 8,004 required); see Michael Cooper, *Angry Voters Shout “Recall” at City Halls*, N.Y. Times, Sept. 23, 2010, at A1 (reporting that the recall effort began after the mayor “laid off police officers and firefighters to try to make ends meet in a city with an unemployment rate of more than 25 percent”).

2. *Davenport*, 737 F. Supp. 2d at 810–11.

3. Notice of Removal, *Davenport v. County of Genesee*, No. 2:10-cv-13503 (E.D. Mich. Sept. 2, 2010), D.E. 1; *Davenport*, 737 F. Supp. 2d at 810–11.

4. Preliminary-Injunction Motion, *Davenport*, No. 2:10-cv-13503 (E.D. Mich. Sept. 3, 2010), D.E. 5; *Davenport*, 737 F. Supp. 2d at 810.

5. Docket Sheet, *Davenport*, No. 2:10-cv-13503 (E.D. Mich. Sept. 2, 2010); Interview with Hon. Arthur J. Tarnow, Oct. 3, 2012.

Tim Reagan interviewed Judge Tarnow for this report by telephone. Judge Tarnow died on January 21, 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

6. Interview with Hon. Arthur J. Tarnow, Oct. 3, 2012.

7. *Id.*

8. Notice, *Davenport*, No. 2:10-cv-13503 (E.D. Mich. Sept. 7, 2010), D.E. 9.

Tarnow determined that, although “there may have been some errors by Defendants in removing valid signatures, Plaintiffs have not met their burden in showing that the issuance of a preliminary injunction in this case is warranted.”¹⁰

Defendants are not required to use the best method of signature review. Human error is sometimes part of the process. Deference must be given to the local clerks. Even if the Clerk had wrongfully interpreted or misapplied the law, her actions would not rise to a Fourteenth Amendment violation, which could only be established with a showing of discrimination on her part.¹¹

The case was dismissed voluntarily on December 16.¹²

9. Docket Sheet, *supra* note 5.

10. *Davenport v. Genesee County*, 737 F. Supp. 2d 809, 815 (E.D. Mich. 2010); *see Cooper*, *supra* note 1 (reporting that after Judge Tarnow’s ruling “the mayor posted the news on his blog: ‘Flint’s recall fever has broken’”).

11. *Davenport*, 737 F. Supp. 2d at 814.

12. Stipulated Order, *Davenport*, No. 2:10-cv-13503 (E.D. Mich. Dec. 16, 2010), D.E. 30 (signed by Judge Cox).