

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.

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**PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION REQUESTING THAT THE CITY OF YPSILANTI BE ENJOINED FROM PLACING BIASED,  
PREJUDICIAL, MISLEADING, INACCURATE, AND FALSE BALLOT LANGUAGE BEFORE THE ELECTORATE**

NOW COME PLAINTIFFS, and for their Motion for Preliminary Injunction Requesting that the City of Ypsilanti Be Enjoined from Placing Biased, Prejudicial, Misleading, Inaccurate, and False Ballot Language Before the Electorate, state as follows:

1. Plaintiffs filed and served a Complaint against the City of Ypsilanti on September 27, 2007 that requested that the City be enjoined from placing an income tax ballot proposal before voters for a number of reasons.
2. Plaintiffs' Complaint is based on the City of Ypsilanti's numerous violations of Michigan statutes and cases that regulate the language, the practice and the procedure for placing ballot proposals before voters.
3. The ballot proposal violates Michigan's Home Rule Act, MCLA 117.21 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).
4. Contrary to the provisions of Michigan's Home Rule Act, the ballot proposal did not receive the necessary 3/5 vote required in the statute. Instead, the ballot proposal received only four of seven votes, which as a matter of mathematical reality and as a matter of law is less than the required 3/5.
5. As a consequence, the ballot language has not been adopted in compliance with the Home Rule Act, *supra*, and cannot lawfully be placed before voters until and unless compliance is achieved.
6. The ballot language, as proposed, also violates MCLA 168.485, 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."
7. The ballot language, as proposed, creates bias and/or prejudice for the proposal.
8. The ballot language, as proposed, also fails to explain that a portion of the language concerning a millage rollback is not actually a part of the ballot proposal, was instead enacted by a resolution of the Ypsilanti City Council, and consequently may be repealed by a simple majority

vote of the Ypsilanti City Council even if voters adopt an income tax.

9. As a consequence of this lack of clarity and the overt omission of an accurate explanation, particularly that the millage rollback is not really tied to adoption of the proposal (as is stated in the proposed ballot language) since the rollback can be repealed by a simple majority vote of City Council at any time, the ballot language is misleading to voters.
10. The ballot language also 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), which prohibits the listing of potential and speculative consequences of adoption of the proposal.
11. The bias and prejudice created by this one-sided listing of speculative consequences while omitting others that are equally meritorious (and equally speculative), is precisely why Citizens for Protection of Marriage, *supra*, prohibits these types of gratuitous, speculative, advocacy statements in ballot language, particularly under the auspices of “voter education.”
12. Despite this prohibition, the proposed ballot language speculates as to future revenue, future expenditures, future service cuts if the ballot proposal is not adopted, and future revenue if the ballot proposal is adopted, and it selectively advocates its adoption by concurrently omitting numerous other predictions (such as the potential negative consequences of adoption).
13. The ballot proposal further violates Michigan law because, subsequent to the adoption of the ballot language (in violation of the Home Rule Act), the language was rendered retroactively inaccurate and untrue on September 18, 2007, when the Ypsilanti City Council enacted another resolution directing its City Manager to maintain its fund balance at 10%.
14. Assuming that the City of Ypsilanti's own budget projections are true, the consequences of maintaining the fund balance at 10% will require reducing the City of Ypsilanti's budget in fiscal year 2011 by approximately \$350,000 and further reducing the budget in fiscal year 2012

by approximately \$2 Million.

15. As a result of the adoption of the resolution on September 18, 2007, the proposed ballot language claiming that “City administration projects that revenue from the proposed income tax would allow current service levels until at least fiscal year 2012” is no longer true, and for this reason alone, it cannot be placed before voters.
  16. As a consequence of the violations listed above, the Court should enter a Preliminary Injunction to prevent the violative proposed ballot language from being placed before voters.
  17. Prior to issuing a preliminary injunction, a court must consider the following:
    - A) The likelihood that the party seeking the injunction will prevail on the merits;
    - B) The danger that the party seeking the injunction will suffer irreparable injury if the injunction does not issue;
    - C) The risk that the party seeking the injunction will be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief; and
    - D) The harm to the public interest if the injunction is issued.
- Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447; 528 NW2d 778 (1995), lv den 450 Mich 929; 543 NW2d 314 (1995); *Detroit v Salaried Physicians Prof’l Ass’n*, 165 Mich App 142, 151; 418 NW2d 679 (1987).
18. Based on the law and facts set forth in the accompanying Brief, it is clear that Plaintiffs are extremely likely to prevail on the merits. Put simply, this is not a close call.
  19. It is also clear that Plaintiffs, as well as voters, will suffer irreparable injury if the violative, biased, prejudiced, misleading and untrue ballot language is placed before voters, as doing so substantially increases the likelihood of adoption of the ballot proposal on the basis of speculation, misleading statements, untrue statements, and advocacy in favor of adoption rather than on the basis of a full, fair, lawful and well-informed vote.

20. It is also clear that Plaintiffs will be harmed more by the absence of an injunction than the opposing party would be if relief is granted, as the City of Ypsilanti may simply comply with Michigan's Election law by first re-writing the language to eliminate bias, prejudice, speculation, its tendency to mislead, and its untrue statements and then comply with Michigan's Home Rule Act by obtaining a 3/5 vote as required.
21. Finally, there can be no harm to the public interest if the injunction is issued – on the contrary, the opposite will occur when the City of Ypsilanti honors and obeys the law by complying with the statutes of Michigan that govern placing ballot proposals and questions before voters.

WHEREFORE, for the reasons set forth above and in the accompanying Brief, Plaintiffs request that the Court issue a Preliminary Injunction enjoining the City of Ypsilanti from placing biased, prejudicial, misleading, inaccurate, and false ballot language before the electorate this November 6.

Respectfully Submitted,

McKEEN & ASSOCIATES, P.C.

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