

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA**

HARRY STOLTZFUS,

Plaintiff,

v.

CASE NO.: 2010-CA-004620

**ROBERT E. "BOB" CARTER, as Chair of
the Committee to Recall Harry Stoltzfus;
ALICE BAIRD, CMC, as City Clerk of Anna
Maria, Florida; and ROBERT "BOB" SWEAT,
as Manatee County Supervisor of Elections,**

Defendants.

_____ /

PLAINTIFF'S RENEWED MOTION FOR ACCELERATED HEARING

Plaintiff, HARRY STOLTZFUS, by and through his undersigned counsel, and pursuant to Fla. Stat. §86.111, hereby moves the Court to schedule an accelerated hearing in this matter, and as grounds for this motion states as follows:

1. Plaintiff is a duly elected Commissioner of the City of Anna Maria, Florida.
2. Defendant CARTER is the statutorily designated Chair of the Committee to Recall Harry Stoltzfus organized pursuant to Fla. Stat. §100.361.
3. On May 21, 2010, Defendant BAIRD, as the City Clerk of Anna Maria, served upon Plaintiff a first recall Petition as more fully described in the Amended Complaint filed herein, which is hereby adopted and incorporated into this Motion by reference.

4. Pursuant to Fla. Stat. §100.361, any defensive statement that Plaintiff wished to submit to be included in the second recall petition was required to be filed with BAIRD'S office within five (5) days after the first recall Petition, or no later than May 28, 2010.

5. On May 24, 2010, Plaintiff filed his original Complaint for declaratory and injunctive relief seeking to have the Court declare and determine that, among other things, the first recall Petition is so vague and ambiguous that it does not furnish Plaintiff fair, reasonable and adequate notice of the charges alleged as grounds for recall, such that he is unable to frame an appropriate defensive statement. The Complaint alleged further that absent fair, reasonable and adequate notice of the charges alleged as grounds for his recall, Plaintiff would be denied his statutory right to submit a defensive statement and his constitutional right to due process of law.

6. The Complaint further alleged that the Petition is not legally sufficient under Fla. Stat. §100.361.

7. Plaintiff also filed contemporaneously with his Complaint a Motion for Accelerated Hearing pursuant to Fla. Stat. §86.111.

8. Although Plaintiff contended (and still contends) that the appropriate time for the Court to review the legal sufficiency of the Petition was before Plaintiff was required to submit his defensive statement, the Court declined to do so in this case.

9. In its order entered on May 26, 2010, the Court denied Plaintiff's request for an accelerated hearing. The Court held that the legal sufficiency of the recall Petition could be reviewed "once the petition process was completed, but prior to the election itself." That is, after the recall committee had obtained the requisite number of valid

elector signatures on the Recall Petition and Defense.

10. Faced with the Court's refusal to review the legal sufficiency of the Petition, Plaintiff submitted a general defensive statement within the time required by law.

11. Thereafter, CARTER and his Committee circulated the Recall Petition and Defense.

12. CARTER submitted the Recall Petition and Defense to BAIRD on July 2, 2010.

13. On July 9, 2010, SWEAT certified that the Recall Petition and Defense contained a sufficient number of valid elector signatures to require a recall election pursuant to Fla. Stat. §100.361.

14. On July 9, 2010, BAIRD served Plaintiff with notice that SWEAT had determined that a sufficient number of valid elector signatures had been obtained and verified.

15. Plaintiff has not resigned from his position as a duly elected Commissioner of the City of Anna Maria and does not intend to do so.

16. Accordingly, pursuant to Fla. Stat. §100.361(4), the Chief Judge of the Twelfth Judicial Circuit is required to fix a day for the holding of a recall election. The election must be held between August 13 and September 12, 2010, pursuant to Fla. Stat. §100.361(4).

17. Plaintiff is filing his Amended Complaint contemporaneously with this Renewed Motion for Accelerated Hearing.

18. Pursuant to Fla. Stat. §86.111, “The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar.”

19. An accelerated hearing is required in order to afford Plaintiff the relief necessary prior to any recall election, as contemplated by Fla. Stat. §100.361, Florida law and the Court’s prior Order.

WHEREFORE, Plaintiff prays the Court enter an order:

1. Authorizing and requiring accelerated responsive filings directed to the legal sufficiency of the Petition and the Recall Petition and Defense;

2. Setting this cause for an immediate and accelerated hearing on the merits of the Amended Complaint;

3. Granting such temporary relief as may be necessary to preserve the status quo;

4. Finding and declaring that the grounds for recall set forth in the Petition and the subsequent Recall Petition and Defense are legally insufficient and that the Petition and Recall Petition and Defense are therefore invalid;

5. Enjoining the Defendants, and any persons acting in concert with them, from taking any action in furtherance of the recall effort;

6. Enjoining the recall election, if one has been scheduled; and

7. Granting such further legal, equitable, declaratory or supplemental relief as the Court deems appropriate.

Dated this 12th day of July, 2010.

/s/ Richard A. Harrison
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail with a courtesy copy via email as indicated, on this 12th day of July, 2010, to:

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/s/ Richard A. Harrison

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