

**IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA**

HARRY STOLTZFUS,

Appellant,

Case No.: 2D10-2592

L.T. No.: 10-CA-4620

v.

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,

Appellees.

APPELLANT'S MOTION FOR EXPEDITED REVIEW

Appellant, HARRY STOLTZFUS ("Commissioner Stoltzfus") by and through his undersigned counsel, hereby moves the Court to grant expedited review of this matter and as grounds for the motion states as follows:

1. This is a municipal recall matter arising under Fla. Stat. §100.361.
2. Commissioner Stoltzfus is a duly-elected Commissioner of the City of Anna Maria, Florida.
3. On Friday, May 21, 2010, Commissioner Stoltzfus was served with a first recall petition pursuant to Fla. Stat. §100.361(3)(a).
4. Pursuant to Fla. Stat. §100.361(3)(a), Commissioner Stoltzfus had only five (5) days after service of the first recall petition within which to submit his

defensive statement to the charges in the petition. Commissioner Stoltzfus' defensive statement was therefore required to be submitted by Friday, May 28, 2010.

5. On Monday, May 24, 2010, Commissioner Stoltzfus filed an action for declaratory and injunctive relief in the circuit court of the Twelfth Judicial Circuit in and for Manatee County. The Complaint alleges that the charges set forth in the first recall petition are vague and ambiguous, mis-state applicable law, are internally inconsistent and fail to provide Commission Stoltzfus with fair, reasonable and adequate notice of the charges against him and the alleged grounds for his recall from office.

6. The Complaint further alleges that the matters set forth in the petition are legally insufficient to demonstrate either malfeasance or misfeasance, the alleged legal grounds for recall in this case.

7. Commissioner Stoltzfus filed with the Complaint a Motion for Accelerated Hearing seeking immediate review of the legal sufficiency of the first recall petition prior to May 28, 2010, the date upon which he was required to submit a defensive statement.

8. On May 26, 2010, the circuit court entered an Order denying Commissioner Stoltzfus' request for injunctive relief and denying the Motion for Accelerated Hearing. In short, the circuit court declined to review the sufficiency

of the first recall petition now because it determined as a matter of law that the appropriate time for any such review is after the second recall petition is certified, assuming the requisite number of elector signatures is obtained by the proponents of the recall.

9. The effect of the circuit court's refusal to grant immediate review is that Commissioner Stoltzfus was compelled to submit a defensive statement on May 28, 2010, that could not possibly fairly address the many vague and legally insufficient charges set forth in the petition.

10. As a result, the entire recall process is now tainted. The recall proponents will now be permitted to circulate their petition with Commissioner Stoltzfus' defensive statement, in an effort to secure the requisite number of elector signatures to compel a recall election. But there is not and will never be any way to ascertain whether any such signatures were or would have been obtained in the absence of the vague and legally insufficient charges in the petition, or had Commissioner Stoltzfus been able to submit a defensive statement addressed to specific allegations.

11. The circuit court has mis-read *Garvin v. Jerome*, 767 So. 2d 1190 (Fla. 2000), to require that judicial review of the sufficiency of a recall petition take place only after the certification of a second recall petition. According to the circuit court's order, *Garvin* "clearly indicates that . . . injunctive and declaratory

relief . . . may be sought after, and only if, 15% of the electors sign the ‘Recall Petition and Defense’ forms.”

12. The majority opinion in *Garvin* does not require that judicial review be deferred until after a second recall petition is certified; indeed, it does not address the timing of judicial review at all.

13. As noted by the Fifth District in *Garvin v. Jerome*, 721 So. 2d 1224, 1227 (Fla. 5 DCA 1998), “In fairness to the office holder who is being subjected to a recall process, if the legal sufficiency of recall grounds set forth in a recall petition are challenged promptly, they should be ruled upon by a court early enough in the process so that any invalid grounds would be stricken.”

14. Relying on the same principle, Justice Lewis’ dissenting opinion in *Garvin* criticized the office holder in that case for doing exactly what the circuit court here has compelled Commissioner Stoltzfus to do - - wait until after a second recall petition is certified to seek judicial review of the legal sufficiency of the recall petition. As noted by Justice Lewis:

Here, had Garvin challenged the sufficiency of the grounds contained in the 10% petition by appropriate legal action and sought injunctive relief when she was statutorily notified of the 10% petition and before the second 15% petition had been completed and submitted to the Supervisor of Elections, the trial court could have taken early action to invalidate the entire petition before further circulation. This would have required the process to recommence with a petition containing only legally sufficient reasons for recall.

Garvin, 767 So. 2d at 1201 (Lewis, J., dissenting)

15. Commissioner Stoltzfus sought prompt judicial review of the sufficiency of the recall petition, filing his Complaint on the next business day after being served with the petition, but was rebuffed by the circuit court.

16. In further pursuit of prompt judicial review of the sufficiency of the recall petition, Commissioner Stoltzfus filed his Notice of Appeal the next business day after entry of the order by the circuit court, and is filing his Initial Brief and Appendix well in advance of the time required by Fla. R. App. P. 9.130(e).

17. Expedited review is available in appropriate circumstances upon motion of a party. *See, e.g. Shaw v. Shaw*, 696 So.2d 391, 392 (Fla. 4 DCA 1997)(granting expedited review upon motion).

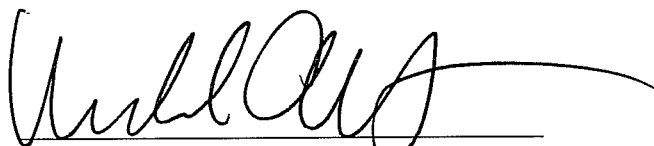
18. This Court has granted expedited review in matters affecting the electoral process. *See, e.g., Gonzalez v. Vogel*, 616 So.2d 473, 475 n. 1 (Fla. 2 DCA 1993)(granting expedited review in matter affecting judicial election).

19. To permit the recall process to proceed based on a legally insufficient recall petition is a clear violation of the recall statute and of Commissioner Stoltzfus' right to due process of law.

20. Moreover, nothing that could happen from this point forward can possibly cure the harm that has already been done to Commissioner Stoltzfus in the recall process. "It would be impossible to prove or determine after the fact, in

accordance with any legally acceptable standard, how electors would have responded, had a substantial or significant part of a multifaceted petition been eliminated before the qualifying signatures had been obtained.” *Garvin*, 767 So. 2d 1190, 1193 (Fla. 2000).

WHEREFORE, Commissioner Stoltzfus requests that this Court enter an order granting expedited review of this matter and ordering an expedited briefing schedule to facilitate such expedited review.



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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 on this 4th day of June, 2010, to:

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