

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

HARRY STOLTZFUS,

Plaintiff/Appellant,

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/Appellees.

FILED FOR RECORD
SHORE
2010 MAY 27 AM 11:41
CLERK OF CIRCUIT COURT
MANATEE CO., FLORIDA

NOTICE OF APPEAL OF NON-FINAL ORDER

NOTICE IS GIVEN pursuant to Fla. R. App. P. 9.130(a)(3)(B) that Plaintiff/Appellant, HARRY STOLTZFUS, appeals to the Second District Court of Appeal the non-final Order by The Honorable Edward Nicholas, Circuit Judge, rendered on May 26, 2010. The nature of the order is a non-final order denying an injunction.

A copy of the Order is attached in accordance with Fla. R. App. P. 9.130(c).



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Board Certified in City, County &
Local Government Law

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via U.S. Mail on this 27th day of May, 2010, to:

Robert B. Sweat
Supervisor of Elections
P.O. Box 1000
Bradenton, FL 34206

Alice Baird, CMC
City Clerk of Anna Maria
P.O. Box 779
Anna Maria, FL 34216

Robert E. "Bob" Carter
Committee to Recall Harry Stoltzfus
239 Willow Avenue
Anna Maria, FL 34216



RICHARD A. HARRISON, ESQUIRE
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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY FLORIDA

HARRY STOLTZFUS,
Plaintiff,

vs.

CASE NO: 2010-CA-4620

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

ORDER

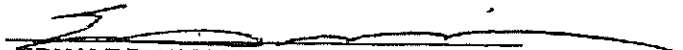
THIS CAUSE having come to be heard upon the Complaint which was filed by the Plaintiff on May 24, 2010, and the Court having reviewed said filing and the Motion for Accelerated Hearing contained therein, and being otherwise fully advised in the premises finds as follows:

In his Complaint, the Plaintiff seeks, among other things, that this Court declare the recall Petition invalid and requests "an immediate and accelerated hearing on the merits". He suggests that the appropriate time to attack the legal sufficiency of the Petition is before the time in which he must file his defensive statement, which is May 28, 2010, and he requests temporary injunctive relief and an expedited hearing pursuant to Fla. Stat. 86.111. This Court has carefully reviewed the Complaint and will find that the Plaintiff has failed to establish the requisite irreparable harm in order to entitle him to the immediate relief that he seeks. Garvin v. Jerome, 767 So.2d 1190 (Fla. 2000) clearly indicates that all

remedies available to the Plaintiff, i.e. injunctive and declaratory relief with the circuit court, may be sought after, and only if, 15% of the electors sign the "Recall Petition and Defense" forms. While Justice Lewis, in his dissent, was critical of Petitioner Garvin for having waited until the recall petition process was completed, the majority suggested that it is entirely appropriate for the court to determine the legal sufficiency of the grounds contained in the petition for recall once the petition process was completed, but prior to the election itself. Said another way, this Court is not persuaded that there is both a lack of adequate remedy available to the Plaintiff and irreparable harm to him absent the entry of the injunction (see Liberty Counsel vs. Florida Board of Governors, 12 So. 3d 183 (Fla. 2009). Quite simply, the Plaintiff has not established that immediate and irreparable injury will result if the temporary injunction is not issued (see also Grand Condominium Association, Inc. vs. Cohn, 970 So. 2d 365 (Fla. 3rd DCA 2007). Additionally, this Court is not persuaded, at this time, that the public interest would be served by the issuance of a temporary injunction (Provident Management Corporation vs. City of Treasure Island, 796 So. 2d 481 (Fla. 2001). The statutory recall procedure, with its mandatory timelines, serves both the public interest in effectuating the smooth administration of the statutory recall process while giving the petitioner ample opportunity to challenge the recall petition itself. Based upon the foregoing, therefore, it is hereby

ORDERED AND ADJUDGED that the Plaintiff's request for temporary injunctive relief and Motion for Accelerated Hearing is DENIED.

DONE AND ADJUDGED this *26th* day of May, 2010 in chambers at Bradenton, Manatee County, Florida.


EDWARD NICHOLAS, Circuit Judge

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