



## Federal Court Temporarily Bans State From Enforcing New Election Law That "Gags" Local Governments and Schools

Laura J. Genovich

*Foster Swift Municipal Law News*

February 5, 2016

As we recently reported, Governor Snyder signed a bill into law on January 6, 2016, that prohibits public entities from using mass communication to distribute information about local ballot proposals during the 60 days before an election. The new law has created confusion and concern for municipalities, libraries, and schools, which often provide newsletters and fact sheets to constituents before an election.

Three weeks after the law was approved, several municipalities and school districts filed a federal lawsuit, seeking a determination that the new law is unconstitutional and an injunction barring enforcement of the law. The defendants in the lawsuit, the State of Michigan and the Secretary of State, have filed a response, which defends the constitutionality of the new law. The Michigan Townships Association, which supports the lawsuit, stated in a press release that "voters deserve to have ballot issues fully explained to them, and that townships need the freedom to be able to do so."

Today, on February 5, 2016, the United States District Court for the Eastern District of Michigan entered an opinion and order granting plaintiff's motion for preliminary injunction. The opinion states that "Plaintiffs have demonstrated a strong likelihood of success on the merits of their claim that §57(3) is unconstitutionally vague and thus void." The court reasoned in part as follows:

§57(3)'s broad language appears inconsistent with the stated purpose of prohibiting "electioneering" conduct with taxpayer funds. One could arguably find a communication that "references" a ballot question to be any communication that merely "mentions" a ballot question. This result appears absurd; it is difficult to imagine that regulators would attempt to sanction or prosecute a public official for merely mentioning a ballot question in a city newsletter, explaining the difference between a millage renewal and millage increase, or explaining what "nonhomestead" means,

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### **AUTHORS/ CONTRIBUTORS**

Laura J. Genovich

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for example. The vague language of §57(3) arguably prohibits these communications, however, leaving it up to regulators to determine what violates the act. Allowing regulators this type of unrestricted judgment call provides no check against arbitrary or discriminatory enforcement and is what the vagueness doctrine is meant to avoid.

The court therefore temporarily enjoins (bans) the State of Michigan and Secretary of State from enforcing §57(3) of the Campaign Finance Act until further order of the court.

Meanwhile, on January 20, 2016, a bill was introduced in the Michigan House of Representatives to repeal the new law. The bill has been referred to the Elections Committee.

We will continue to monitor the lawsuit and the new bill. If you have questions about the status of these measures or if your public body needs assistance complying with the new law, please contact Anne Seuryncx or Laura Genovich at Foster Swift.