

No. _____

In the
Supreme Court of the United States

Pat Foster,

Petitioner,

v.

John C, Kleussendorf and John T, Benson, and
Ganges Township, John Hebert, Supervisor,

Respondents.

**On Petition for Writ of Certiorari
to the Michigan Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The State of Michigan's Freedom of Information Act, Act 442 of 1976 provides for public documents to be open to public inspections. Unless specifically exempted, all documents must be open to public inspection. MCL 15.243(1)(r) specifically exempts "*Records of a campaign committee including a committee that receives money from a state campaign fund.*" Because Judges and Justices are all elected in Michigan, so their campaign finance bank accounts are exempted from disclosure under the Act.

However, Michigan Court Discovery Rules do allow litigants to request production of documents from a Judge or Justice under MCR 2.310(D)(1), "*A request to a nonparty may be served at any time....*"

Do litigants have the right to see through discovery an elected official's campaign finance bank accounts protected from public view by statute?

LIST OF PARTIES

The following is a list of all parties to the proceedings in the court below, as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

Hudson v. Kleussendorf:

1. Pat Foster, Petitioner,
2. Blanche Hudson, Plaintiff
3. John Kleussendorf,
4. John Benson,

Pat Foster v. Ganges Township, John Hebert
Supervisor:

5. Ganges Township, John Hebert
Supervisor

Circuit Court Judges:

6. Judge Kevin Cronin, 48th Judicial
Circuit Court, Michigan
7. Judge Margaret Z. Bakker, Chief Judge
48th Judicial Circuit Court, Michigan

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PETITION FOR A WRIT OF CERTIORARI

Pat Foster respectfully petitions for a consolidated writ of certiorari to review the two judgments of the Michigan Supreme Court regarding the issue of discovery by litigants of campaign finance bank accounts that are secret by statute. This consolidated petition has an extension of time to file until Oct. 23, 2017 under Application No. 17A193. See App. C

OPINIONS RENDERED

Blanche Hudson & Pat Foster v. John Kleussendorf & John Benson:

May 31, 2017 - Motion for a subpoena filed on Dec. 5, 2017 to the Michigan Supreme Court to see the campaign finance bank account of Judge Kevin Cronin was denied without explanation. App. A6

November 16, 2016, a subpoena request to see Judge Cronin's campaign finance bank account in *Foster v. Ganges Township* was declined by Judge Bakker with no explanation. App. A5

September 22, 2016, the Michigan Court of Appeals denies without explanation my "*Motion to Compel Justices Douglas B. Shapiro, PJ, Joel P. Hoekstra, and Deborah A. Servitto, JJ to Produce Their Campaign Finance Reports.*" App. A

June 2, 2016, a motion to compel Judge Cronin to produce his campaign finance reports was denied without explanation by the Michigan Court of Appeals. App. A2

April 18, 2016, Judge Cronin issues a Sua Sponte order denying my motion filed on April 1, 2016 to compel him to show me his campaign finance reports. His stated explanation for denying my motion was “*A final order disposing this case was filed on June 6, 2015. Therefore, the proofs and additional discovery in this case is (are) closed.*” App. A3 to A4

Pat Foster v. Ganges Township, John Hebert Supervisor:

July 25, 2017, the Michigan Supreme Court denied my Interlocutory Appeal of the Court of Appeals denial of my motion for a subpoena of Judge Margaret Z. Bakker’s Campaign Finance Bank Statements. See App. B3

April 18, 2017, the Michigan Court of Appeals denies my motion for a subpoena to discover the bank statements of Judge Cronin’s Campaign Finance Bank Account without explanation. App. B

February 22, 2017, Judge Margaret Z. Bakker, the Chief Judge of the 48th Judicial Circuit Court in Allegan County, Michigan declined my subpoena to the Fifth Third Bank for copies of her bank statements for the “*Committee to Elect Margaret Bakker Circuit Court Judge for the period starting January 1, 2012 and ending December 31, 2016.*” App. B2

JURISDICTION

Rule 10(c) of the Supreme Court Rules and 28
U.S. Code § 1257(a)

U.S. SUPREME COURT RULE CONSTRUED

Rule 10(c):

“a state court.... has decided an important
question of federal law that has not been, but should,
settled by this Court,...”

FEDERAL STATUTE CONSTRUED

28 U.S. Code § 1257(a):

“where the validity of a statute of any State is
drawn in question...”

**STATEMENT OF CURRENT DISPOSITIONS
IN BOTH CASES**

Hudson/Foster v. Kleussendorf/Benson:

Summary disposition was affirmed by the Court of Appeals, and the Michigan Supreme Court denied appeal by leave. The Motion for a Subpoena to see the campaign finance bank accounts of Judge Cronin was denied. The case is still active because the COA vacated in total Judge Cronin's order for costs and sanctions, and remanded it back to the lower court for reconsideration.

Pat Foster v. Ganges Township:

The Michigan Supreme Court has heard an Interlocutory appeal of a motion before the COA for a subpoena to see the campaign finance bank accounts of the Honorable Margaret Z. Bakker. Two appeals remain before the COA on summary disposition, and costs plus sanctions. Currently all briefs have been filed and I am awaiting notification of a hearing.

**CONSTITUTIONAL PROVISION AS APPLIED TO
THE MICHIGAN STATUTE & CODE**

U.S. Constitution, Amendment XIV, Section 1; “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law*, nor deny to any person within its jurisdiction the equal protection of the laws.”

MCL 15.243(1)(r) “Records of a campaign committee including a committee that receives money from a state campaign fund” are specifically exempt from public disclosure under the Michigan Freedom of Information Act, Act 442 of 1976.

Michigan Code of Judicial Conduct, Canon 2. (A) (A) “*A judge must avoid all impropriety and appearance of impropriety*”.

The issue before the Court is how can a litigant receive due process, if judges and justices who are elected and have a tax free public account that is not subject to audit or public disclosure “*avoid all impropriety and appearance of impropriety*” if they decline discovery on these accounts? Do those denials breach the “due process” provisions of the Fourteenth Amendment?

STATEMENT OF THE CASE

I. Hudson v. Kleussendorf History:

2008 General Election, Judge Cronin wins recount, Pat Foster audits election results:

After the 2008 General Election in Allegan County, Judge Cronin first won his seat on the circuit court in a very close recount with William Bailargeon who had two volunteers for every table that was recounting the ballots. I attended that recount and photographed numerous ballot container seals. Judge Cronin only had one volunteer to count the 49 precincts that were requested to be counted. His volunteer was Jason Watts, the son of the Allegan County Clerk, Joyce Watts who was responsible for securing the ballots from the date the recount was requested to the date of the recount.

August 23, 2009, I led four groups of volunteers in Allegan County to photograph and count the ballots of that election under the Michigan Freedom of Information Act. The conclusion of my audit was based upon an audio¹ of the Allegan County Clerk at a hearing for a recount in 2006. The County Clerk admitted that the new tabulators that came out under the Help America Vote Act had modems on them that she could access the tabulators by telephone to see the results after each machine was

¹ Audio is part of a YouTube video:
<https://youtu.be/SVmD42L6C10>

tested and sealed. The 2008 recount of Judge Cronin's circuit court race disallowed 25 out of 49 precincts requested for 14 precincts with the incorrect number of ballots in the ballot container, and 11 precincts with improperly attached seals. I photographed the seals of two ballot containers in my audit that I used multiple times in briefs before both the circuit and appellate courts. One was like a garbage tie only pulled up very loosely, so it could be cut, compromised, and pulled up tight. The second had the smooth end of the tie cut off, and it was pulled up tight indicating that this precinct had been compromised. Since the Secretary of State's election officer who was running this recount accepted these two ballot containers, while rejecting 11 others, I came to the conclusion that the County Clerk and the state were involved in the possible theft of the election that gave Judge Cronin his seat on the circuit court.



John Kleussendorf and John Benson:

The defendants, John Kleussendorf and John Benson purchased their property uphill and across the street from my property and adjacent to Ms. Hudson's property on January 10, 2010, or 140 days after the start of my election audit.

They filled in a storm drain in front of their house and placed metal stakes out into the physical private road in our development. Then Mr. Benson filed an Ex Parte Personal Protection Order (PPO) against me which was signed by Judge Margaret Z. Bakker on May 4, 2012. I filed a motion to terminate the PPO against me, and Judge Bakker set it for an evidentiary hearing which was not heard until Feb. 6th and decided on Feb. 27, 2013 over 10 months after the Court approved a restraining an order for 12 months against me.

I had instructed my attorney to subpoena all of the media that the defendants claimed to have to support their claim for an ex parte PPO. It arrived after the first hearing, and it showed that the petitioner, Mr. Benson had filed a petition for a restraining order with false, vulgar statements that he had alleged I said on November 26, 2011. The entire dialog was on the subpoenaed video, which proved his allegations were false. He had also sworn to those statements under oath at the first hearing. My attorney had gone into chambers on Feb. 27, 2013 just prior to the second hearing, and Judge Bakker suppressed this video from being entered into evidence.

*Civil Suit Hudson/Foster v.
Kleussendorf/Benson:*

Defendants had placed a fence on the private platted road known as



Mallard Street, and placed a physical dam on their property on their side of a fence. The dam was 8” from the culvert outlet that ran under Ms. Hudson’s driveway. Neither the lower court, nor the court of appeals ever addressed this picture.

II. Procedural History (Hudson v. Kleussendorf):

Circuit Court, 48th Judicial Circuit – Michigan:

Oct. 11, 2013, Plaintiffs filed the original complaint with pictures of two dams defendants placed on their property to block the flow of storm water.

Mar. 20, 2014, Plaintiffs’ motion for change of venue was denied Apr. 22, 2014.

May 15, 2015, Defendants’ motion for security for costs. July 30, 2014 Court accepted and required plaintiffs to post a \$30,000 bond. Sep. 11, 2014 Plaintiffs posted the bond.

August 4, 2014, Defendants’ motion for partial summary disposition filed. The motion was heard and granted on Oct. 15, 2015. Plaintiffs filed an Interlocutory Appeal before the Michigan Court of Appeals on Oct. 31, 2015. On Mar. 25, 2015 denied my appeal by leave “for failure to persuade the Court of the need for immediate appellate review.”

Sept. 23, 2014 Plaintiffs filed Affidavits of Merit that included a video showing exactly how the blockages the defendants placed in the storm drain was damaging both plaintiffs’ properties. Also included

was the deposition of the man who took care of the road a storm drains for a period between 15 to 20 years, He stated that the defendants placed a fence on what had been a traveled road, and blocked an existing storm drain.

Oct. 16, 2014, Plaintiffs' Motion to Compel defendants to disclose who was paying their legal fees because of the \$30,000 bond we posted was denied by the lower court on Dec. 11, 2014. Plaintiffs' filed an Interlocutory Appeal on Dec. 29, 2014 with the Michigan Court of Appeals. Mar. 25, 2015, the COA denied to hear our appeal "for failure to persuade the Court of the need for immediate appellate review."

Dec. 8, 2014, Plaintiffs file a motion to allow counsel to withdraw from the case. The Court allowed counsel to withdraw on Mar. 11, 2015.

Feb. 8, 2015, Defendants Motion for Summary Disposition. Hearing held May 11, 2015 and Court granted motion on June 6, 2015. Plaintiffs filed a Claim of Appeal with the Michigan Court of Appeals on June 11, 2015. The COA affirmed the lower court's order on Oct. 11, 2016. Plaintiff Pat Foster appealed to the Michigan Supreme Court on Nov. 21, 2016. The higher court declined to hear it May 31, 2017.

Mar. 4, 2015, Plaintiffs filed a motion for Judge Cronin to disqualify himself based upon pictures of the two seals photographed during his 2008 election

recount. Motion was heard, denied, and filed on Mar. 3, 2015. The denial was appealed to the Chief Judge, the Honorable Margaret Z Bakker on April 2, 2015. The Court affirmed the lower court's opinion on Apr. 29, 2015.

July 2, 2015, Defendants filed a motion for costs and attorney fees with payment of the security bond. Motion was heard on Feb. 3, 2016, and the Court issued an opinion on May 3, 2016 accepting defendants' motion accessing \$43,837.30 in costs and attorney fees. The order was appealed to the COA on May 21, 2016. The appeal was heard on Sep. 6, 2017, and the order was vacated in total and remanded to the lower court for reconsideration on Sep. 19, 2017.

April 1, 2016, Plaintiffs' motion to compel the court to produce his campaign finance reports was filed.
App. A11 – A13

Apr 18, 2017, the Court issued a sua sponte order denying our motion because "A final order disposing this case was filed on June 6, 2015. Therefore, the proofs and additional discovery in this case is closed." The Court erred, the final order was issued on May 3, 2016 at that time. App A3 to A4

Michigan Court of Appeals:

May 21, 2016, Motion to Compel Judge Cronin to Produce His Campaign Finance Reports was denied on June 2, 2016 by Justice Joel P. Hoekstra acting under MCR 7.211(E)(2). App. A2

Sept. 19, 2016, Plaintiffs after serving the COA Justices a request to produce their campaign finance reports under MCR 2.310(D) on Apr. 28, 2016, we filed a motion to compel them to provide us with these reports. Our motion was denied without explanation on Sept. 22, 2016. App. A

Michigan Supreme Court:

December 5, 2016, a motion for a subpoena under MCR 7.305(1) was brought before the Michigan Supreme Court based upon a subpoena that was requested at the lower court and declined April 18, 2017. The subpoena was to the United Bank in Hopkins that Judge Cronin reported to the Secretary of State as his depository location for his public campaign finance bank account. The request was for “Bank statements for the Committee to Elect Kevin Cronin for Judge for the years 2013 through 2016”. See App. A5.

May 31, 2017, the motion for a subpoena was denied without explanation. See App. A6

III. Petition for a Writ of Mandamus against Ganges Township:

While petitioner was working on summary disposition in Hudson/Foster v. Kleussendorf/Benson, Ganges Township issued building permits to build on Blue Goose Avenue, which is a private road within our platted development. It comes off of 122nd Avenue, a public road and comes down a 43' hill heading north where it turns and goes west. Mallard Street goes east.

My lots in Recreation Development Subdivision No. 1 are at the bottom of the 43' hill on Mallard Street shaded in grey. My lots border on a channel off of Lake Hutchins which is the lowest level water can flow. Kleussendorf and Benson blocked the storm drain coming onto their property, which is adjacent to Ms. Hudson's parcel, both uphill and south of my property. This blockage resulted in storm water being diverted onto my property.

Ganges Township issued building permits to two parcels which are on the east and west side of Blue Goose Avenue coming off of 122nd Avenue. There are storm drains on both sides of Blue Goose Avenue.



The property on the east side, they made sure that the storm drain had been completely cleaned out and the parcel owner was required to put a 12" culvert under his driveway. That allowed storm water to freely flow down to the Kleussendorf dam resulting in storm water backing up and going over Mallard Street flooding my property. The parcel owner on the west side of Blue Goose Avenue was allowed to build right over the storm drain without placing any culverts so that the storm water would flow out onto Blue Goose Avenue and down to my property where I was now the focal point of the majority of water flowing down the hill into the development.

I filed a Petition for a Writ of Mandamus to require Ganges Township to comply with the Land Division Act of 1967(LDA) which governs platted developments, because Blue Goose Avenue was private and dedicated to the use of the lot owners and adjacent property owners. The township's position on their building permits was that Blue Goose Avenue was private, therefore they did not have to comply with the Rules & Regulations of the Allegan County Road Commission, and my position cited the LDA definition of "*accessible*", MCL 560.102(j)(ii) "Is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the state transportation department or county road commission under 1969 PA 200, MCL 247.321 to 247.329. and of the city or village..."

The consolidating issue is that the township, Kleussendorf, and Benson are all attempting to flood me out of my home, and are closely working with each other.

IV. Procedural History (Foster v Ganges):

April 20, 2016, I filed a Petition for a Writ of Mandamus to require Ganges Township to comply with the Land Division Act of 1967. The building permit issued to Jencie LaFontaine at 2210 Blue Goose Avenue that caused me to file me petition was issued on February 5, 2016. Judge Kevin Cronin was assigned to hear the case.

May 18, 2016, Defendants file a motion for summary disposition and sanctions.

May 23, 2016, I filed "*Plaintiff's Motion to Compel the Court to Produce his Campaign Finance Reports*" based upon MCR 2.310(D)(4). This motion was filed based upon Request to Produce to the Court his Campaign Finance Reports under MCR 2.310(D) sent to Judge Cronin on April 22, 2016. A hearing was set for June 13, 2016. Judge Cronin called for a special hearing on June 9, 2016 and disqualified himself.

Oct. 14, 2016, I received a notice to appear on Nov. 23, 2016 for a pre-trial hearing before Judge Cronin.

Oct. 17, 2016, Judge Cronin filed an “Amended Disqualification”, and Judge Bakker was assigned to the case.

Oct. 31, 2016, Defendants filed a renewed motion for summary disposition and sanctions.

Nov. 2, 2016, Petitioner filed a Request for Judge Bakker to Produce the Campaign Bank Statements of her Campaign Finance Account. She refused personal service at the circuit window, and it was refiled and served by mail on Nov. 9th. She never complied with the request.

Petitioner filed a motion for an adjournment, because Defendants’ motion for summary disposition pointed directly to Judge Cronin’s decisions in Hudson v. Kleussendorf. That case still had not been decided by the Court of Appeals at that point.

Petitioner filed an answer to defendants’ renewed motion for summary disposition and sanctions.

Petitioner placed an Affidavit of Merit into the court record with an attached video showing the flooding of my property as the direct result of the townships’ failure to require a culvert under Ms. LaFontaine’s driveway going over the storm drain.

Nov. 22, 2016 Judge Bakker sent out a notice that the Nov. 23, 2016 hearing date would be heard on

Dec. 5, 2016. I did not receive the notice prior to going to court on the 23rd.

Dec. 5, 2016 Judge Bakker denied my motion for an adjournment and refused to accept my affidavit of merit with attached video into evidence. She ruled in favor of defendants' motion for summary disposition.

Dec. 12, 2016, defendants filed a Taxation of Costs requesting \$190.66 in costs and \$12,654.08 in attorney fees under MCR 2.111(E). I filed an objection to defendants' Order for Taxation of Costs under the 7 Day Rule. The service to the defendants' attorneys' address and PO Box was returned to me on Jan. 7, 2017 as undeliverable. I mailed it a second time on Jan. 10, 2017 with a hearing date set for Jan. 30, 2017.

At the Jan. 30, 2017 hearing, the court would not allow me to address my argument under the 7 day rule that there was nothing "frivolous" about requesting the township to comply with the law. The court denied my objection. I then filed a subpoena to inspect the bank statements for the Committee to Elect Margaret Bakker Circuit Court Judge..

February 22, Judge Bakker declined my subpoena. The final order was issued on Feb. 7, 2017.
App. B2

Appellate and Supreme Court Procedural History:

Feb. 8, 2017, I filed for an appeal before the Michigan Court of Appeals for summary disposition.

Mar. 4, 2017, I filed for an appeal before the COA on costs and sanctions.

Apr. 4, 2017, I filed a motion for a subpoena that Judge Bakker had declined.

Apr. 18, 2017, the Court of Appeals denied my motion with no explanation. App. B

May 25, 2017, an application for leave to appeal was filed with the Michigan Supreme Court.

July 25, 2017 the Michigan Supreme Court ordered that *“the application for leave to appeal the April 18, 2017 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.”* App. B3

REASONS FOR GRANTING THE WRIT

I. Due process – *Caperton v. Massey*, US; 129 S Ct 2252; 173 L Ed 2d 1208 (2009):

The *Caperton* case and “*due process*” was my central argument in all of my filings in an attempt to get discovery.

Hudson/Foster v. Kleussendorf/Benson

Apr. 1, 2016, the first motion to compel Judge Cronin to produce his campaign finance reports backed up with bank statements stated: (App. A11 – 12) “This motion is being brought under the standards established by the United States Supreme Court in *Caperton v Massey*, US; 129 S Ct 2252; 173 L Ed 2d 1208 (2009). That case dealt with a State Supreme Court Justice having been asked to recuse himself because of indirect campaign contributions from Don Blankenship, Massey’s chairman and principal officer. In a 5 to 4 split decision, the U.S. Supreme Court held in favor of Caperton that ‘*due process requires recusal*.’”

Dec. 5, 2016, Brief filed in support of motion for subpoena before the Michigan Supreme Court. The following cites were made: “The *Tumey* Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse

himself when he has ‘a direct, personal, substantial, pecuniary interest’ in a case.” *Tumey v. Ohio*, 273 U.S. 510. 47 S.Ct. 793, 92 L.Ed. 749 (1948); *Capterton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2259 (2009).

“Due process requires an objective inquiry into whether the contributor’s influence on the election under all the circumstances ‘would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true’ “ *Tumey*, supra, at 532, 47 S.Ct. 437. *Caperton*, supra 2264. App. A10

Foster v. Ganges Township

May 25, 2017, My application for an interlocutory leave to appeal a denied COA motion for a subpoena to get copies of the bank statements of Judge Margaret Z. Bakker’s campaign finance account was filed, and my brief in support of that appeal cited the following:

(App. B11 to B12) “The fact that MCL 15.243(r) creates a secret account in which a judge can receive tax free money for decisions, and they refuse to show this account through multiple efforts of discovery by a litigant, there exists more than an ‘*appearance of impropriety*,’ but a very high probability that if they attempt to hide these accounts from the public there exists an actual *impropriety*. “Due process requires an objective inquiry into whether the

contributor's influence on the election under all the circumstances '*would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true*' 'Tumey v. Ohio, 273 U.S. 510. 47 S.Ct. 43, L. Ed. 749 (1948); Capterton v. A.T. Massey Coal Co., Inc., 129 S.Ct. 2264 (2009). 'Recognizing the deprivation of the right to an impartial judge as a structural error and explaining that [t]he entire conduct of the trial from beginning to end is obviously affected ... by the presence on the bench of a judge who is not impartial'; *Rose v. Clark*, 478 U.S. 570, 577, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986); *People v. Stevens*, 498 Mich.162, 869 N.W.2d 246 (2015)"

II. Secrecy:

The Michigan Freedom of Information Act, MCL 15.232(e) defines a "*Public Record* means as a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act."

Under Section 13, MCL 15.243(1)(r) “Records of a campaign committee including a committee that receives money from a state campaign fund” are specifically excluded under the act from public disclosure. Campaign finance bank accounts in Michigan are secret by statute.

“As Edmund Burke, a noted 18th Century statesman and philosopher, wrote:

In all justice, as in all government, the best and surest test of excellence, is the publicity of its administration; for, whenever there is secrecy, there is implied injustice.

With regard to ‘secrecy,’ Lord Acton said:

Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity.

In addition, President John F. Kennedy stated:

The very word secrecy is repugnant in a free and open society; and we are as a people inherently and historically opposed to secret societies, to secret oaths, and to secret proceedings. We decided long ago that the dangers of excessive and unwarranted concealment of pertinent facts far outweighed the dangers which are cited to justify it.

On the issue of ‘secrecy,’ I stand by Edmund Burke, Lord Acton, and President Kennedy. A justice's duty to inform the public about what the justice believes

the public needs to know—no more, no less—regarding how this Court conducts the people's judicial business is more important than some judges' desire to make the judiciary a 'secret club.'

The Michigan Supreme Court should not be a 'secret club.' When elected twice by the people, I did not join one.

CORRIGAN, YOUNG, and MARKMAN, JJ.” *Brady v. Attorney Grievance Com'n*, 486 Mich. 997; 793 N.W.2d 398 (2010)

President Johnson stated in his signing statement to the first act allowing public disclosure of public documents in 1966:

“The measure I sign today, S. 1160, revises section 3 of the Administrative Procedure Act to provide guidelines for the public availability of the records of Federal departments and agencies.

This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the nation will permit.”

The “*security of the nation*” goes directly to the intent of legislators in creating laws that make the bank accounts of elected officials secret. These accounts should by law show what the campaign finance laws have required these elected officials to file as campaign finance reports. If they differ

dramatically, then this does not involve our national security, but it does show motives of why a Judge or Justice would want hide the money they received for fear that it could be linked to their decisions.

“The *Tumey* Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has ‘a direct, personal, substantial, pecuniary interest’ in a case.” *Tumey v. Ohio*, 273 U.S. 510. 47 S.Ct. 793, 92 L.Ed. 749 (1948); *Capterton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2259 (2009). There is no way of determining if they have a “*personal, substantial, pecuniary interest*” unless discovery allows us to see those accounts.

The intent of the legislators was to provide a tax free bank account for elected officials to take money for decisions that would be kept secret from public view. There is nothing in an elected officials’ public bank accounts that affects anything other than what they are required by law to report. If there is a substantial difference, than they should not be hearing the case before them.

CONCLUSION

Syllogism used in my brief before the Michigan Supreme Court. App B11:

1. All elected officials have secret financial accounts that can be used for illegal gains.
2. Elected officials who have illegal gains will attempt to keep anyone from seeing their secret accounts.
3. Judges Bakker and Cronin are both elected officials who have tried to keep me from seeing their secret accounts, therefore they have something illegal in their accounts that may affect my case.

Respectfully submitted,

Mary Pat Foster
6079 Mallard Street
Fennville, MI 49408
Telephone: (269) 561-5268
Facsimile: (888) 445-2120
Email: CPA@WMNC.biz

Pro se

App. A
Court of Appeals
State of Michigan

ORDER

Blanche Hudson v John C Kleussendorf

Docket No. 327878

LC No. 13-052422 NZ

“Motion to Compel Justices Douglas B. Shapiro, PJ,
Joel P. Hoekstra, and Deborah A. Servitto, JJ to
Produce Their Campaign Finance Reports” is
DENIED

Filed Sept. 9, 2016

Before Shapiro, PJ, Hoekstra, and Servitto

The Court orders that the “Motion to Compel Justices
Douglas B. Shapiro, PJ, Joel P. Hoekstra, and Deborah A.
Servitto, JJ to Produce Their Campaign Finance Reports” is
DENIED.

Sept. 22, 2016 Douglas Shapiro, Chief Justice

App. A2
Court of Appeals
State of Michigan

ORDER

Blanche Hudson v John C Kleussendorf

Docket No. 327878

LC No. 13-052422 NZ

Motion to Compel Judge Cronin to Produce His
Campaign Finance Reports

Filed May 21, 2016

Joel P. Hoekstra, Judge, acting under MCR
7.211(E)(2), orders:

The motion to compel Judge Cronin to produce
his campaign finance reports is DENIED.

June 2, 2016 Joel P. Hoekstra

App. A3
STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF
ALLEGAN 48TH JUDICIAL CIRCUIT

BLANCHE HUDSON and PAT FOSTER,
Plaintiffs,

vs.

JOHN KLEUESSENDORF and JOHN BENSON,
Defendants.

Case No. 13-052422-NZ

**SUA SPONTE ORDER ON MOTION TO COMPEL
JUDGE CRONIN'S CAMPAIGN
FINANCE RECORDS**

At a session of said Court held in the County Building
in the City and County of Allegan, State of Michigan,
on the 18th day of April, 2016 Present:
The Honorable Kevin Cronin, Circuit Judge.

This Court, having reviewed the Plaintiffs'
motion and responses thereto, finds and
ORDERS the following:

1. On April 1, 2016, the Plaintiffs filed a
motion pursuant to MCR 2.310(D)(4) to
compel Judge Cronin to provide his
campaign finance records.

App. A4

2. A final order disposing this case was filed on June 6, 2015. Therefore, the proofs and additional discovery in this case is closed.¹
3. The Plaintiffs filed a motion to disqualify Judge Cronin on March 4, 2015. This motion was considered and denied.
4. **THEREFORE**, the Plaintiffs motion is **STRICKEN** and will be removed from the Court's docket without hearing.

IT IS SO ORDERED AND ADJUDGED.

April 18, 2016

Kevin Cronin, Circuit Judge

¹Under Michigan law, MCR 7.202(6)(a)(iv) provides that post judgment orders “awarding or denying attorney fees or costs under MCR 2.403, 2.405, 2.625 or other law or court rule” are considered “final orders” that are separately appealable. The final order in this case on costs and sanctions did not occur until May 3, 2016, or 15 days after the Court issued their Sua Sponte Order on April 18, 2016. See *TGINN Jets, LLC v Hampton Ridge Props, LLC*, unpublished opinion per curiam of the Michigan Court of Appeals

App. A5
STATE OF MICHIGAN
48th Judicial Circuit

SUBPOENA
Order to Produce
Case No. 16-56487-AW

Pat Foster,

Plaintiff,

v.

Ganges Township, John Hebert Supervisor,

Defendants.

In the Name of the people of the State of Michigan
to: United Bank, 102 W. Main St., Hopkins, MI
49328

You are ordered to Produce/permit inspection or
copying of the following items: Bank statements for
the Committee to Elect Kevin Cronin for Judge for
the years 2013 through 2016.

Declined - mzb¹ 11/16/16

¹ Margaret Z. Bakker, Chief Judge of Allegan County

App. A6
Michigan Supreme Court
Lansing, Michigan

Order

May 31, 2017
SC 154789 & (95), COA 327878,
And Allegan CC: 13-052422-NZ

BLANCHE HUDSON,
Plaintiff,

and

PAT FOSTER,
Plaintiff-Appellant,

v.

JOHN C. KLEUSSENDORF AND JOHN T.
BENSON

Defendants-Appellees

On order of the Court, the application for leave to appeal the October 11, 2016 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion for a subpoena is DENIED.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 31, 2017 Larry S. Royster, Clerk

App. A7
**STATE OF MICHIGAN
IN THE SUPREME COURT**

Supreme Court Case No. 154789
Court of Appeals No. 327878
Circuit Court Case No. 13-52422-NZ

Pat Foster,
Plaintiff-Appellant

v.

John C. Kleuessendorf and John T. Benson,
Defendants-Appellees

Motion brought before the Michigan Supreme Court based upon a subpoena to see Judge Cronin's campaign finance bank account that was declined by Judge Bakker in my Petition for a Writ of Mandamus against Ganges Township while still in the lower court. Filed December 5, 2016

**BRIEF IN SUPPORT OF
MOTION FOR SUBPOENA**

ARGUMENT AND LAW

Question I: Should the Court authorize a subpoena of bank statements for Judge Cronin's public account, the Committee to elect Kevin Cronin judge at the United Bank in Hopkins, Michigan?

Standard of Review: "...matters of law are reviewed de novo." *People v. LeBlanc*, 465 Mich. 575, 579; 640 N.W.2d 246 (2002).

Preservation of error: Denial of a subpoena requested for discovery without explanation.

Argument: Judges and justices are allowed to maintain a campaign finance account, and if they cumulatively do not accumulate more than \$1,000 while in office they are allowed to retire from the bench with no accounting of what is in that account as long as their debts are paid. Judge Cronin during the 2008 General Election showed approximately \$11,850 in pre-general contributions and \$4,250 in his amended post-general totaling over \$16,000 from outside contributors. January 21, 2009 after being elected to the 48th Judicial Circuit Court, Judge Cronin filed an Amended Organization Statement requesting a waiver of reporting. He has served 8

App. A9

years on the bench, and has not filed one campaign finance report since then, and the \$1,000 limit is cumulative over all 8 years.

If you have nothing to hide, my original request could have simply been answered with a written statement saying that he has not taken in enough funds to file a report. That was not done by either Judge Cronin or the Court of Appeals. My request for a subpoena only covered the period of time that he was involved in our civil suit to determine if he had taken money from the defendants' attorney.

April 30, 2015, prior to the hearing for summary disposition scheduled for May 11, 2015, I filed three affidavits with the court. One was my affidavit, and I stated on # 8) "On March 30, 2015, after the hearing for Judge Cronin to recuse himself, I was walking down the hall with Mr. Cudney, the Defendants' attorney, and I asked him if he would be willing to settle our civil case. He said no, and that the Court was going to give him my "30,000, and if I appealed, I would also lose that appeal." Subsequent events proved that Mr. Cudney knew exactly what was going to happen. You can only know that much

App. A10

of the future if it has already been determined prior to hearings and appeals.

“The Tumey Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has ‘a direct, personal, substantial, pecuniary interest’ in a case.” *Tumey v. Ohio*, 273 U.S. 510. 47 S.Ct. 793, 92 L.Ed. 749 (1948); *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2259 (2009).

“Due process requires an objective inquiry into whether the contributor’s influence on the election under all the circumstances ‘would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true’ “ *Tumey*, supra, at 532, 47 S.Ct. 437. *Caperton*, supra 2264.

The issue in Michigan was to block the average citizens’ right to see these accounts by making campaign finance accounts an exception to the Freedom of Information Act, MCL 15.243(r). In order to “hold the balance nice, clear and true” litigants must have some access through discovery to determine if the court is *prejudiced or biased* against them before the court admits so in a motion, while running away from it.

App. A11
STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF
ALLEGAN

BLANCHE HUDSON AND PAT FOSTER,

Plaintiffs,

v

JOHN C. KLUESSENDORF AND JOHN T.
BENSON,

Defendants.

File No. 13-52422-NZ

Honorable Kevin Cronin, Circuit Court Judge
48th Judicial Circuit

MOTION TO COMPEL THE COURT
TO PRODUCE HIS CAMPAIGN FINANCE
REPORTS

Now comes the Plaintiffs to request the Court to Compel Itself to produce its own campaign finance reports under MCR 2.310(D)(4) to show contributions and

App. A12

expenditures for a period covered from September 1, 2013 to March 14, 2016.

This motion is being brought under the standards established by the United States Supreme Court in *Caperton v Massey, US; 129 S Ct 2252; 173 L Ed 2d 1208 (2009)*. That case dealt with a State Supreme Court Justice having been asked to recuse himself because of indirect campaign contributions from Don Blankenship, Massey's chairman and principal officer. In a 5 to 4 split decision, the U.S. Supreme Court held in favor of Caperton that "*due process requires recusal.*"

Under the State of Michigan Statutes, the legislators provided two laws giving all elected judges and justices a tax free account to accept "*contributions*" that can be used to have the court abuse it's discretion in violation of the current laws in favor of the party making the contribution(s), Michigan Election Law allows under MCL 169.235 (2) "*a candidate committee for an officeholder who is a judge or a supreme court justice*" to not have to file their campaign finance reports. The Michigan State Legislators closed the backdoor for public inspection of these records by making an exception under the Freedom of Information Act, MCL 15.243(1)(r), which

App. A13

specifically exempts *“Records of a campaign finance committee including a committee that receives money from a state campaign fund.”* Since all campaign records are public information, this excludes only our justice system from public review.

Prayer for Relief

Plaintiffs respectfully request that the Court either recuse itself from any further actions in this case or produce its campaign finance reports with copies of bank statements from your campaign account so that we can verify that the Court has not accepted any contribution(s) that might have influenced its decisions in this case.

Date: 4-1-16

Pat Foster, Plaintiff

Date: 4-1-16

Blanche Hudson, Plaintiff

App.B
STATE OF MICHIGAN
Court of Appeals
ORDER

Pat Foster v Ganges Township
Docket No. 336937
LC No. 16-056487-AW

By Murphy, Markey, and Boonstra

The Court orders that the motion for subpoena is
DENIED.

William B. Murphy, Presiding Judge

A true copy entered and certified by Jerome W.
Zimmer Jr., Chief Clerk, on April 18, 2017.

Jerome W. Zimmer, Jr., Chief Clerk

App. B2
STATE OF MICHIGAN
48th Judicial Circuit

SUBPOENA
Order to Produce
Case No. 16-56487-AW

Pat Foster,

Plaintiff,

v.

Ganges Township, John Hebert Supervisor,

Defendants.

In the Name of the people of the State of Michigan
to: Fifth Third Bank. 1511 Lincoln Rd. Allegan, MI
49010

You are ordered to Produce/permit inspection or
copying of the following items: Bank statements for
the Committee to Elect Margaret Bakker Circuit
Court Judge for the period starting January 1, 2012
and ending December 31, 2016.

Declined -- mzb¹ 2/22/17

¹ Margaret Z. Bakker, Chief Judge of Allegan County and party
whose records are requested to be subpoenaed.

App. B3
Michigan Supreme Court
Lansing, Michigan

Order

July 25, 2017
SC 155827, COA 336937,
Allegan CC 16-056487-AW

PAT FOSTER,
Plaintiff-Appellant,

v.

GANGES TOWNSHIP AND GANGES TOWNSHIP
SUPERVISOR
Defendants-Appellees

On order of the Court, the application for leave to appeal the April 18th, 2017 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

July 25, 2017 Larry S. Royster,
Clerk of the Michigan Supreme Court

App. B4
IN THE MICHIGAN SUPREME COURT

SC No: 155827
COA: 336937
Allegan CC: 16-056487-AW

Pat Foster,
Plaintiff-Appellant

v.

Ganges Township
Defendants-Appellees

**PLAINTIFF-APPELLANT'S APPLICATION
FOR LEAVE TO APPEAL**

**MOTION FOR A SUBPOENA TO GET
COPIES OF THE BANK STATEMENTS OF
THE COMMITTEE TO ELECT MARGARET
Z. BAKKER JUDGE**

Appeal from the Michigan Court of Appeals
Murphy, W., Markey, J., Boonstra, M,
Filed May 25, 2017

App. B5
APPEAL

I appeal by leave the decision made by the Michigan Court of Appeals in Grand Rapids on April 18, 2017. They denied with no explanation my Motion for a Subpoena to get copies of the bank statements of the Committee to Elect Margaret Z. Bakker Judge. Pat Foster v. Ganges Township, COA Docket No. 336937.

Questions Presented under MCR 7.305(B)(1):

1. The Freedom of Information Act, MCL 15.243(r), *“Records of a campaign committee including a committee that receives money from a state campaign fund”* are specifically exempted from public disclosure under this act. This statute directly conflicts with Canon 2(A) of the Michigan Code of Judicial Conduct: *“A judge must avoid all impropriety and appearance of impropriety”*. A tax free campaign bank account that is held to be secret from the public is an *“appearance of impropriety.”* Since a Michigan statute makes campaign finance accounts secret, shouldn't any litigant be able to see those accounts to make sure that there is not an actual impropriety under Canon 2 of the Michigan Code of Judicial Conduct? Grounds: MCR 7.305(B)(1) The issue involves a substantial question about the validity of a legislative act.

FACTS

Defendant/Appellee

The Court has the right to use judicial discretion to settle disputes.

Statutory Conflicts of Interest: Under the Michigan Finance Act, MCL 169.224(5) “When filing a statement of organization, a committee, other than an independent committee, a political committee, or a political party committee, may indicate in a written statement signed by the treasurer of the committee that the committee does not expect for each election to receive an amount in excess of \$1,000 or expend an amount in excess of \$1,000. The treasurer of a committee of an incumbent judge or justice is considered to have made the statement required under this subsection following appointment or election of that judge or justice and is not required to file a written statement under this subsection indicating that the committee does not expect for each election to receive or expend an amount in excess of \$1,000.”

MCL 169.224(8) “A candidate committee that files a written statement under subsection (5) or that is considered to have made a statement under subsection (5) is not required to file a dissolution statement under subsection (7) if the committee failed to receive or expend an amount in excess of \$1,000 and 1 of the following applies:

App. B7

(a) The candidate was defeated in an election and has no outstanding campaign debts or assets.

(b) The candidate vacates an elective office and has no outstanding campaign debts or assets.”

The Freedom of Information Act is subject to all public documents except those that are specifically exempted. MCL 15.243 (r) “Records of a campaign committee including a committee that receives money from a state campaign fund” are specifically exempted from public disclosure under the act.

ARGUMENT AND LAW

I. Question: Since a Michigan statute makes campaign finance accounts secret, shouldn't any litigant be able to see those accounts to make sure that there is not an actual impropriety under Canon 2 of the Michigan Code of Judicial Conduct?

Standard of review: This Court reviews a trial court's decision to grant or deny discovery for an abuse of discretion. *Shinkle v. Shinkle* (On Rehearing), 255 Mich.App. 221, 224, 663 N.W.2d 481 (2003). The issue of privilege has a bearing on whether materials are discoverable, MCR 2.302(B)(1) (“[p]arties may obtain discovery regarding any matter [that is] not privileged”). “Once we determine whether the privilege is applicable to the facts of this case, we can determine whether the trial court's order was an

App. B8

abuse of discretion.” *Baker v. Oakwood Hosp. Corp.*, 239 Mich.App. 461, 468, 608 N.W.2d 823 (2000)

Preservation of error: Failure of the Court of Appeals to deny a subpoena request for the bank statements of Judge Margaret Z. Bakker’s campaign finance account with no reason given by the court.

Argument:

If every elected official in our country has a “privileged” account, then that is an authority to all elected officials to take money for decisions by statute. The Michigan Court system must comply with Canon 2A. of the Michigan Code of Judicial Conduct that says “*A judge must avoid all impropriety and appearance of impropriety.*” The very fact that each judge has a public, tax free bank account that is held to be secret from public scrutiny means that those judges must open those accounts to a litigants discovery to assure impartiality.

My house and property are both now being flooded by two causes from different incidents that each judge ruled on to keep the flooding continuing.

Attempts to obtain discovery in Foster v. Ganges:

Judge Cronin disqualified himself twice. The first time was on June 9, 2016 at a special hearing where he called in both the defendants and I. This was done four days prior to his having to hear my

App. B9

Motion to Compel him to show me his campaign finance account on June 13, 2017. Five months later on October 14, 2016, the Chief Judge of Allegan County, the Honorable Margaret Z. Bakker assigned the case back to Judge Cronin for a pre-trial hearing set for November 23, 2016. On October 17, 2016, Judge Cronin filed an *“amended order of reassignment/disqualification”* This order was not put into the mail to me until October 27, 2016.

On November 2, 2016, I filed a request for Judge Bakker to produce the campaign bank statements of her campaign finance account through an audit confirmation request under MCR 2.310(D). I served this request to Judge Bakker personally at the window for the hearing clerk who takes the judges' copies of all pleadings. Approximately one week later, I received the entire package back with a cover letter from Anne Lange, Secretary to Judge Bakker stating: *“Please find enclosed materials dropped off at the Circuit Court window on November 2, 2016. They are being returned to you because they are not properly filed.”* On November 10, 2016, I placed into the mail the request to produce Judge Bakker's campaign finance bank statements. Under MCR 2.310(4) I had to give Judge Bakker at least 14 days before I could file a Motion to Compel.

On November 22, 2016, Judge Bakker rescheduled the November 23rd hearing to December 5, 2016. I showed up on November 23rd and was told

App. B10

that the hearing had been rescheduled. On December 5, 2016, Judge Bakker refused to accept my Affidavit of Merit, which included the video *Foster v. Ganges* into evidence. She ruled in favor of summary disposition, which puts the case out of her court into the Court of Appeals. I filed a subpoena request with the 48th Judicial Circuit Court in February, 2017. It was declined on 2/22/2017 by “mzb”(Margaret Z. Bakker).

On April 4, 2017, I filed a motion for a subpoena before the Michigan COA, which was declined on April 18, 2017 without explanation of the defendants filing a reply to my motion. It is now being appealed to this court.

Formal logic:

There are two forms of formal logic where a set of premises (facts) are used to prove a conclusion. First, where the truth lies outside of your premises, it is defined as inductive reasoning. The majority of cases before a court involve inductive reasoning. Second, when the truth of your argument lies within the premises, this is called deductive reasoning, or the facts are prima facie evidence. Deductive reasoning received a tool from the Greek philosopher, Aristotle in his logic. He defined syllogism¹ as an argument of a form containing a major premise and a minor premise connected with a middle term and a conclusion. Based upon formal logic, my argument

¹ Webster's Universal College Dictionary, © 1997, pg. 798

App. B11

under deductive reasoning using a syllogism is as follows:

1. All elected officials have secret financial accounts that can be used for illegal gains.
2. Elected officials who have illegal gains will attempt to keep anyone from seeing their secret accounts.
3. Judges Bakker and Cronin are both elected officials who have tried to keep me from seeing their secret accounts, therefore they have something illegal in their accounts that may affect my case.

Under Aristotle's syllogism, if the first two statements are true, then the last statement must also be true.

Law:

The fact that MCL 15.243 (r) creates a secret account in which a judge can receive tax free money for decisions, and they refuse to show this account through multiple efforts of discovery by a litigant, there exists more than an "*appearance of impropriety*," but a very high probability that if they attempt to hide these accounts from the public there exists an actual *impropriety*. "Due process requires an objective inquiry into whether the contributor's influence on the election under all the circumstances 'would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true'" *Tumey v. Ohio*, 273 U.S. 510. 47 S.Ct. 43, L. Ed. 749 (1948); *Capterton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2264 (2009). "Recognizing the deprivation of the right to an

App. B12

impartial judge as a structural error and explaining that [t]he entire conduct of the trial from beginning to end is obviously affected ... by the presence on the bench of a judge who is not impartial”; *Rose v. Clark*, 478 U.S. 570, 577, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986); *People v. Stevens*, 498 Mich.162, 869 N.W.2d 246 (2015). Appellant’s subpoena request will prove either impartiality or an impropriety that should not exist in a court room.

RELIEF SOUGHT

I respectfully have two requests of the court. First, I ask that my Motion for a Subpoena in SC No. 154789 be consolidated with this motion. Second, I ask that the court remand both subpoena requests to the trial court for the appropriate approvals.

May 25, 2017 Pat Foster, Appellant-Plaintiff

App. C
Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

August 18, 2017

Mr. Pat Foster
6079 Mallard Drive
Fennville, MI 49408

Re: Pat Foster v.
John C. Kluessendorf, et al.
Application No. 17A193

Dear Mr. Foster:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kagan, who on August 18, 2017, extended the time to and including October 23, 2017. This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk
Clayton Higgins, Case Analyst