



# CORPORATION COUNSEL

1 S. Main St., 8th Floor  
Mount Clemens, Michigan 48043  
586-469-6346 Fax 586-307-8286

**Corporation Counsel**  
George E. Brumbaugh, Jr.

**Assistant Corporation Counsel**  
Lucy Kaiser  
Frank Krycia  
James S. Meyerand  
Jill K. Smith

## MEMORANDUM

To: Board of Commissioners

From: Jill K. Smith  
Assistant Corporation Counsel

Subject: Absent Voter Ballot Applications Resolution

Date: January 22, 2008

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On July 30, 2007, Judge David Viviano ruled that the Board of Commissioners properly authorized the County Clerk to distribute absent voter ballot applications. He stated that, under the separation of powers doctrine, the judiciary will not interfere with the discretionary actions of a legislative body, such as a board of commissioners, unless the action is capricious or arbitrary. Judge Viviano also held that the resolution of the Board of Commissioners did not violate the "purity of elections" clause in the Michigan Constitution, or the Equal Protection Clause of the U.S. Constitution; nor did the resolution "dilute" the Plaintiffs' votes.

The Plaintiffs have appealed this ruling to the Court of Appeals. Briefs have been filed and we are waiting for a date for oral argument. The Plaintiffs did not request a stay of proceedings while the appeal was pending. Therefore, Judge Viviano's ruling is the law of

### MACOMB COUNTY BOARD OF COMMISSIONERS

Andrey Duzyj - District 1  
Marvin E. Sauger - District 2  
Phillip A. DiMaria - District 3  
Jon M. Switalski - District 4  
Susan L. Doherty - District 5

Joan Flynn - District 6  
Sue Rocca - District 7  
David Flynn - District 8  
Robert Mijac - District 9  
Philis DeSaele - District 10

Ed Szczepanski - District 11  
Peter J. Lund - District 12  
Don Brown - District 13  
Brian Brdak - District 14  
Keith Rengert - District 15

William A. Crouchman  
District 23  
Chairman

Dana Camphous-Petersou  
District 18  
Vice-Chair

Leonard Haggerty  
District 21  
Sergeant-At-Arms

Carey Torrice - District 16  
Ed Brulcy - District 17  
Paul Gielegern - District 19  
Kathy Tocco - District 20

Betty Slinde - District 22  
Sarah Roberts - District 24  
Kathy D. Vosburg - District 25  
Leon Drolet - District 26

the case and the Board of Commissioners has the authority to authorize the County Clerk to distribute absent ballot voter applications.

(The Court of Appeals has ruled that a municipal clerk cannot mail unsolicited absent voter ballot applications in the Detroit case. However, that case can be distinguished from our case because the Detroit City Clerk did not have authority from the City Council to mail the applications. Since Judge Viviano's ruling, several municipalities in both Oakland and Macomb Counties have authorized their clerks to mail applications.)