

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOEL CROOKSTON,

Plaintiff,

No. 1:16-cv-01109

v

HON. JANET T. NEFF

JOCELYN BENSON, Michigan Secretary of
State, in her official capacity,

MAG. ELLEN S. CARMODY

Defendant.

EXHIBIT A

SETTLEMENT AGREEMENT

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Plaintiff,

v

JOCELYN BENSON, Michigan Secretary of
State, in her official capacity,

Defendant.

No. 1:16-cv-01109

HON. JANET T. NEFF

MAG. ELLEN S. CARMODY

Stephen R. Klein (P74687)
Attorney for Plaintiff
455 Massachusetts Ave, NW, Ste 359
Washington, DC 20001
202.804.6676

Ann M. Sherman (P67762)
Deputy Solicitor General
Attorney for Defendant
P.O. Box 30217
Lansing, MI 48909
517.335.7659

Patrick Jaicomo (P75705)
Attorney for Plaintiff
45 Ottawa Ave, SW, Ste 1100
P.O. Box 306
Grand Rapids, MI 49501
616.831.1782

Arless Rosemarie Hudson
Attorney for Plaintiff
4614 Riverwood Circle #1102
Raleigh, NC 27612
407.538.8589

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between Plaintiff, Joel Crookston (Plaintiff), and Defendant, Secretary of State Jocelyn Benson in her official capacity (Defendant), referred to hereafter collectively as "the parties."

RECITALS

WHEREAS, there has been a dispute between the parties resulting in a lawsuit under 42 U.S.C. § 1983 in the United States District Court for the Western

District of Michigan captioned *Joel Crookston v Jocelyn Benson*, assigned Docket Number 1:16-cv-1109;

WHEREAS, Defendant asserted various defenses to the facial and as-applied challenges to the challenged state statutes, Mich. Comp. Laws §§ 168.579 and 168.738, and two of the Secretary's instructions—one banning photography in the polling place (subject to an exception for credentialed media) and the other involving cell phone use in the polling place;

WHEREAS discovery is complete and the parties have filed cross-motions for summary judgment but have not yet filed reply briefs and the Court has not yet heard oral argument on the motions;

WHEREAS, the parties have agreed that in order to avoid protracted, costly litigation, the attorneys' fees, costs, and expenses associated with this controversy should be resolved without further litigation;

AGREEMENT

Therefore, in consideration of the foregoing and of the mutual promises hereinafter set forth, the receipt and accuracy of which is hereby acknowledged, the parties agree as follows:

1.0 SETTLEMENT OF SUBSTANTIVE ISSUES AND ATTORNEYS FEES

Defendant agrees to the following:

1. Michigan Compiled Laws sections 168.579 and 168.738(2) do not apply to displaying a photograph of one's own marked ballot outside of the 100-foot buffer zone around a polling place.

2. Defendant will amend the polling place photography and cell phone instructions to allow voters to photograph their own marked ballot within a voting station or voting booth. These revised instructions will not be issued until after the May 7, 2019 election, but will be developed and made publicly available prior to the August 6, 2019 election.

Plaintiff agrees to the following:

3. Plaintiff agrees to voluntarily dismiss with prejudice his complaint in this matter in its entirety.

4. Plaintiff agrees to settle all attorneys' fees, costs, and expenses related to Defendant's involvement in *Joel Crookston v Jocelyn Benson*, assigned Docket Number 1:16-cv-1109 in the United States District Court, Western District of Michigan, for the amount set forth in 2.0.

2.0 PAYMENTS

2.1 Upon Plaintiff's compliance with the terms and conditions set forth in Section 1.0, Defendant agrees to pay the total sum of Ninety Thousand Dollars to Plaintiff Joel Crookston. Accordingly, Defendant shall issue a state warrant payable to Joel Crookston in the amount of Ninety Thousand Dollars (\$90,000). Said payment shall be made by July 1, 2019.

2.2 The payment outlined in this section shall be paid in complete satisfaction of all the attorneys' fees, costs, and expenses incurred by Plaintiff in *Joel Crookston v Jocelyn Benson*, assigned Docket Number 1:16-cv-1109 in the United States District Court, Western District of Michigan.

2.3 It is understood and agreed to by the parties that this settlement, and the payments relating thereto, is a compromise of disputed claims and is not to be construed as an admission of liability on the part of Defendant, the State of Michigan, or their other employees or agents, by whom liability is expressly denied.

3.0 RIGHT TO SET-OFF

The parties agree that any payment made in connection with this Settlement Agreement is subject to any offset which the State of Michigan is empowered by law to exercise against Joel Crookston.

4.0 TAX RESPONSIBILITY

Plaintiff, and his attorneys, agree that he is solely responsible for his portion of any and all federal, state or local taxes that are due as a result of payments made under this Agreement. Plaintiff further acknowledges and agree to indemnify and hold harmless Defendant, and her employees, officials, attorneys, representatives, agents, facilities, and insurers, in the event that any federal, state, or local taxing authority asserts any claim for liability based upon payment of sums under this Agreement, including but not limited to: unpaid taxes; failure to withhold taxes; penalties; interest or other sums that may become due to any taxing authority. Defendant, and her attorney, makes no representations or warranties about the tax consequences of any monies paid pursuant to this Agreement.

5.0 REPRESENTATION OF COMPREHENSION OF DOCUMENT

In entering into this Settlement Agreement, Plaintiff represents that he has not relied upon the advice of Defendant, Defendant's attorneys, or Defendant's

assigns or privies regarding the legal and tax consequences of this Settlement Agreement; and, the terms of this Settlement Agreement are fully understood and voluntarily accepted by Plaintiff.

6.0 GOVERNING LAW

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan.

7.0 ADDITIONAL DOCUMENTS

All parties agree to cooperate fully and execute any and all documents and to take all additional actions necessary to give full force and effect to the basic terms and intent of this Settlement Agreement.

8.0 ENTIRE AGREEMENT

This Agreement contains the entire agreement between Plaintiff and Defendant, and any and all discussions, understandings, or agreement, whether written or oral, had by the parties with respect to the subject matters hereof are merged into this Agreement, which alone fully and completely expresses the parties' agreement.

9.0 SUPPLEMENTS, MODIFICATIONS, AMENDMENTS AND WAIVER

No supplement, modification, or amendment of this Settlement Agreement shall be binding unless executed in writing by both Plaintiff and Defendant. No waiver of any provision of this Settlement Agreement shall constitute a waiver of any other provision, whether similar or not; nor shall any waiver constitute a

continuing waiver. No waiver shall be binding unless set forth in writing signed by the party making the waiver.

10.0 CAPACITY TO EXECUTE AGREEMENT

By signing hereunder, the signatories attest and warrant that they have legal authority to bind the party on whose behalf they sign.

11.0 COPIES AND FACSIMILE

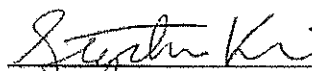
Any copy or facsimile of a signature of a party to this Agreement shall be treated as, and have the same force and effect as, an original signature.

12.0 EFFECTIVENESS

The Agreement is effective when signed by all parties.

13.0 FACSIMILE SIGNATURES


This Settlement Agreement may be executed in whole or in part by facsimile signatures any of which shall be deemed to be an original signature.



Stephen Klein (P74687)
Pillar of Law Institute
Attorney for Plaintiff
455 Massachusetts Avenue NW Ste. 359
Washington, DC 20001-2742
202.804.6676

4-5-19

Date



Ann M. Sherman (P67762)
Deputy Solicitor General
Michigan Dept of Attorney General
Attorney for Defendant
P.O. Box 30217
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Date