

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Desmond White,

Plaintiff,

Case No. 16-cv-12547

v.

Judith E. Levy

United States District Judge

Wayne County Election
Commission,

Mag. Judge Mona K. Majzoub

Defendant,

v.

Michael Edward Duggan,

Intervening Defendant,

_____ /

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION TO COMPEL TESTIMONY [48]**

On October 19, 2016, plaintiff filed a motion to compel the testimony of four individuals at the scheduled November 18, 2016 hearing. (Dkt. 48.) Plaintiff seeks to subpoena Mayor Mike Duggan; Judge Freddie G. Burton and Eric Sabree in their capacity as Wayne County Election Commissioners; and Christy Goldsmith Romero, the Special Inspector General for TARP. (*Id.* at 3.)

Defendant claims that the Commission is immune from plaintiff's suit and therefore none of its members are required to testify. (Dkt. 50 at 3.) Defendant has argued in its separate motion to dismiss that the Commission is entitled to Eleventh Amendment immunity because it is an "arm of the state." (Dkt. 42 at 42–43.) The Court has preliminarily reviewed this issue for purposes of the upcoming hearing. Even assuming defendant's argument is correct, plaintiff is seeking injunctive and declaratory relief (Dkt. 32 at 30), and therefore does not appear to be entitled to immunity. *Ernst v. Rising*, 427 F.3d 351, 358–59 (6th Cir. 2015) (noting that "immunity does not apply if the lawsuit is filed against a state official" for injunctive relief instead of damages).

Plaintiff correctly states that to prove that M.C.L. §§ 168.952(2) and (3) are void for vagueness, she bears the burden of demonstrating that the Commission's enforcement action was done in an arbitrary or discriminatory manner. *See Belle Maer Harbor v. Charter Twp. Of Harrison*, 170 F.3d 553, 556 (6th Cir. 1999). Judge Freddie G. Burton and Eric Sabree were both involved in the Commission's vote to reject plaintiff's recall petition, and their testimony may be relevant to

ascertaining whether the manner in which they rejected the petition was arbitrary or discriminatory.

Accordingly, plaintiff's motion to compel is GRANTED IN PART with respect to Judge Freddie G. Burton and Eric Sabree, and DENIED IN PART with respect to Mayor Mike Duggan and Christy Goldsmith Romero, because, at this time, their testimony is not relevant to the legal issue before the Court.

IT IS SO ORDERED.

Dated: October 20, 2016
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 20, 2016.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager