On November 20, 2015, an election regarding a $96 million building bond in South Washington County School District 833 resulted in 18 ballots being challenged.

On November 25, 2015, 18 challenged ballots were reviewed by the South Washington County Canvassing Board, whose members ignored and/or disregarded Minnesota law and the Minnesota Constitution when determining voter intent. Per Minnesota Statute 204C.22, “a ballot shall not be rejected for a technical error that does not make it *impossible* to determine voter’s intent.” Out of the 18 challenged ballots, five were erroneously declared to be “ambiguous/non-votes” when they were obviously “No” votes according to the law. By declaring these ballots as “non-votes”, the board effectively disenfranchised five voters and ensured the passage of the $96 million bond. Had the five ballots been counted as “No” votes, the outcome for Ballot Question #2 would have been a tie and the $96 million bond would have failed.

The South Washington Citizens for Progress committee was formed as an opposition campaign against the ISD833 Bond and Levy Referendum in the Fall of 2015. Comprised of Washington County residents, they worked to raise the funds required to fight against the proposed bonds and levy and then raised funds for the court battle to restore the voices of the five disenfranchised voters. The repeated and persistent violations of the law by the school district, Canvassing Board and the court may have far reaching consequences to school district elections across the entire state because statutory law doesn’t allow for ballots to be discarded. In Minnesota, we do everything we can to make certain that every vote counts. It’s the law!

Represented by Attorney Erick Kaardal, local residents Susan Richardson, Andrea Mayer-Bruestle and Leilani Holmstadt, brought suit against the SWC ISD833 to include the remaining five challenged ballots. With the understanding that the law was crystal clear, the group moved ahead with the election challenge.

What should have been a relatively simple case took a complicated turn when, on December 18, 2015, Judge Galler recused himself and alluded to the recusal of the entire Washington County District Court because of their supervisory role over Clerk of Court, Annette Fritz. Under the law, Fritz served on the South Washington County School District Canvassing Board and offered an opinion on the ballots at issue in the election contest. On December 21st, Washington County District Court Chief Judge, John Hoffman, assigned retired Judge Kathleen Gearin of Ramsey County to hear the case.

The assignment of Judge Gearin violated the Rules of Court. There is no provision in the Rules of Court for a chief judge of one district to assign the matter to a judge in a different district. When an entire district court disqualifies itself for bias, the chief judge of District Court is required to notify the Chief Justice of the Minnesota Supreme Court. The Supreme Court then assigns the case to a competent judge.

In her ruling, Judge Gearin concurred with District 833’s argument that the precedent case, Ganske v. Independent School District 84, should be applied to this election challenge. Ganske was a case brought before the Supreme Court decades ago prior to the federal Voting Rights Act, electronic ballot counting machines and MN Statute 204C.22 & 205A.02. The judge allowed case law to subvert the statutory standard leading many in the community to scratch their heads in disbelief. We believe that this apparent intentional disregard of the law was meant to have an intentional outcome.

Ballots must be counted *consistently* and *uniformly* throughout the state in all elections. There is no room for error. The Canvassing Board and Judge Gearin’s decision to disregard Minnesota Statutes may have serious consequences in election recounts and Canvassing Board decisions throughout the state. When members of canvassing boards fail to follow the law, the integrity of MN elections no longer exist.

Judge Gearin stated, during the January 4, 2016 motions hearing and subsequent trial, later the same day that MN elections are sacred and emphasized the importance of this election challenge. Under Minnesota Statute, discretion is removed from canvassing boards making no allowance for ambiguity regarding ballots. A ballot in MN cannot be rejected for a technical error that does not make it impossible to determine voter’s intent. So why did the judge side with the school district in contradiction to the law given her “elections are sacred” quote?

ISD833 then requested a $9.3 million surety bond from the plaintiffs should the case be appealed. If the court had rejected the bond, the plaintiffs could have faced a civil suit had they lost the Supreme Court challenge. The school district claimed the “holding up of bonds” would cause additional costs with respect to increased interest rates and construction costs even though the issuance of bonds would not occur until Feb. 4, 2016, at the earliest. The lack of financial means coupled with the possibility of a civil action were so egregious that an appeal could not filed and this historic case could not reach its proper judicial review at the Supreme Court.

Susan Richardson

Andrea Mayer-Bruestle

Leilani Holmstadt

Plaintiffs in Richardson, Bruestle, Holmstadt

Vs

South Washington County Schools ISD833