STATE OF MICHIGAN
COURT OF CLAIMS

COMMITTEE TO BAN FRACKING IN MICHIGAN and LUANNE KOZMA,

Plaintiffs,

v

Case No. 18-000274-MM

SECRETARY OF STATE RUTH JOHNSON, DIRECTOR OF ELECTIONS SALLY WILLIAMS, in their official capacities, and BOARD OF STATE CANVASSERS,

Defendants.
_____/

Ellis Boal (P10913)
Counsel for Plaintiffs
9330 Woods Rd.
Charlevoix, MI 49720
231.547.2626
ellisboal@voyager.net

Matthew Erard (P81091)
Counsel for Plaintiffs
400 Bagley St. #939
Detroit, MI 48226
248.765.1605
mserard@gmail.com
_____/

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. In adopting Michigan's 1963 Constitution, the people of Michigan reserved unto themselves the power to introduce legislation by means of a statutory initiative under Const 1963, art 2, § 9. This action is brought by a ballot question committee sponsor and voter-supporter of one such statutory initiative campaign which has timely submitted well over the constitutionally prescribed threshold of 252,523 voter signatures to invoke this unassailable right of the people.

2. As a result of both the unlawful refusal of Defendants Johnson and Williams to accept Plaintiffs' timely petition-filing and Defendants' position of enforcing the impermissible signature-counting restriction of MCL 168.472a, Plaintiffs now bring this action to (i) compel Defendants to recognize and act upon Plaintiffs' timely petition filing; and to (ii) challenge the constitutional validity of MCL 168.472a as applied to the process for a invoking a statutory initiative.

PARTIES

3. Plaintiff Committee to Ban Fracking in Michigan ("CBFM") is a ballot question committee[1] properly formed under the laws of Michigan and headquartered in Charlevoix. Through the tireless efforts of over 800 volunteer circulators from 60 Michigan counties, it has collected and submitted for filing approximately 270,962 petition signatures from Michigan voters for a statutory initiative under Const 1963, art 2, § 9.

1 MCL 169.202(3).

4. Plaintiff LuAnne Kozma serves as the Director of CBFM and personally tendered the filing of Plaintiffs' petition to the elections division office of Defendants Johnson and Williams on November 5, 2018. Plaintiff Kozma is also a registered Michigan elector who signed CBFM's petition more than 180 days prior to the petition's date of filing.

5. Defendant Ruth Johnson is Michigan's Secretary of State and is responsible for receiving the "filing" of CBFM's statutory initiative petition,[2] and "immediately notify[ing]" Defendant Board of State Canvassers thereof.[3]

6. Defendant Sally Williams is the Director of Elections for Michigan's Department of State and is responsible for administering the division charged with receiving statutory initiative petition filings on behalf of Defendant Johnson[4] and for producing the Secretary of State staff report to the Board of State Canvassers recommending a finding of sufficiency or insufficiency for each such filed petition.[5]

7. Defendant Board of State Canvassers is the four-member body established by statutory implementation of Const 1963, art 2, § 7, which is responsible for canvassing filed statutory initiative petitions and issuing an official declaration of

---

2 MCL 168.471.

3 MCL 168.475(1).

4 MCL 168.32(1).

5 See, e.g., Mich Dep't of State, *Staff Report of "Michigan Comprehensive Cannabis Law Reform" Initiative Petition* (published June 7, 2016) <http://michigan.gov/documents/sos/Staff_Report_-_Cannabis_Law_Reform_526211_7.pdf> (accessed December 5, 2018).

each such petition's sufficiency or insufficiency.[6] The Board of State Canvassers also reviews and approves the form of petition proofs submitted for such approval prior to circulation for voter signatures.[7]

JURISDICTION

8. This Court has jurisdiction over equitable and declaratory claims against state boards and officers under MCL 600.6419(1)(a) and (7).

FACTS

A. 180-Day Restriction

9. In 1971 the Supreme Court decided *Wolverine Golf Club v Secretary of State*,[8] striking down MCL 168.472's still-enacted prohibition on filing statutory initiative petitions less than ten days prior to the start of a legislative session. The reason: Const 1963, art 2, § 9 did not authorize the Legislature to impose such a restriction on the process for invoking a statutory initiative:

> There is no specific authority for such statute in Const 1963 [art 2, § 9] . . . . We read the stricture of that section, "the legislature shall implement the provisions of this section," as a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate. This constitutional procedure is self-executing. . . . It is settled law that the legislature may not act to impose additional obligations on a self-executing constitutional provision.[9]

---

6 MCL 168.476-77(1).

7 See Mich Dep't of State, *Initiative and Referendum petitions* (revised July 2017) <http://michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf> at 2-3 (accessed December 5, 2018)

8 384 Mich 461; 185 NW2d 392 (1971).

9 *Id*. at 466 (internal quotation mark omitted).

10. In 1973, the Legislature enacted 168.472a, which then provided:

> It shall be rebuttably presumed that the signature on a petition which proposes an amendment to the constitution or is to initiate legislation, is stale and void if it was made more than 180 days before the petition was filed with the office of the secretary of state.

11. Apart from two stylistic wording changes made by a 1999 legislative amendment,[10] this same original version of 472a, permitting rebuttal of the presumed staleness of signatures older than 180 days, was in force when CBFM began collecting signatures on its initiative petition in May of 2015.

12. In OAG 1974, No. 4813, the Attorney General opined that the 180-day signature limitation of MCL 168.472a, as then worded in its less-stringent original formulation, was unconstitutional as to both statutory initiative and constitutional amendatory initiative petitions, upon respectively differing grounds. As to Const 1963, art 2, § 9, governing statutory initiative petitions, the Attorney General opined:

> This provision has been held to be self-executing [citing *Wolverine Golf Club*]. Although that provision concludes with language to the effect that the legislature should implement the provisions thereof, such language has been given a very limited construction by the Michigan Supreme Court, which held that this provision is merely:
>
> > "... a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate...."
>
> I am consequently of the opinion that, as applied to signatures affixed to petitions

10 1999 PA 219 substituted "that" for "which" and "the signature" for "it."

which initiate legislation pursuant to Const 1963, art 2, § 9, § 472a is beyond the legislature's power to implement [and] said section and is therefore unconstitutional and unenforceable.[11]

13. In the ensuing twelve years, initiative petitions, including some with signatures gathered more than 180 days before filing, were filed with the Secretary of State, certified by the Board of State Canvassers, and approved by vote of the people.

14. In *Consumers Power Company v Attorney General*,[12] the Supreme Court affirmed a judgment of the circuit court which overruled OAG 1974, No. 4813, but only as applied to constitutional amendatory initiatives under Const 1963, art. 12, § 2. Grounding its holding *entirely* upon a distinct provision in the text of art 12, § 2, the Supreme Court reasoned:

> Of extreme importance to resolution of the present controversy is focus on the absence of a call for legislative action in Const 1908, art 17, § 2 and the clear presence of one in Const 1963, art 12, § 2 as evidenced in the sentence: "Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law." . . .
>
> The language just quoted from art 12, § 2 of our constitution clearly authorizes the Legislature to prescribe by law for the manner of signing and circulating petitions to propose constitutional amendments. . . .
>
> This distinction is of considerable significance *and indeed provides the authorization for the Legislature to have enacted MCL 168.472a*. The Constitution of 1963, unlike that of 1908, does summon legislative aid in . . . the areas of circulation and signing.[13]

---

11 Exhibit 4: OAG 1974, No. 4813 at 172 (quoting 384 Mich at 466).

12 426 Mich 1; 392 NW2d 513 (1986).

13 426 Mich at 5-9 (line break, parallel citation, and footnote omitted) (emphasis added).

15. In contrast to Const 1963, art 12, § 2, the language of art 2, § 9 contains no similar call for legislative action respecting the manner of circulating and signing statutory initiative petitions. Hence, the Court's *Consumers Power* decision did not disturb the finding of OAG 4813 as applied to statutory initiatives.

16. On August 8, 1986, while *Consumers Power* was on appeal from the circuit court, Defendant Board of State Canvassers adopted a policy of attempting to implement the 180-day statute and applied it to *both* constitutional *and* statutory initiatives. The policy stood without challenge until December 14, 2015, when Defendant Williams' predecessor in office proposed an amendment to the 1986 implementation policy.

17. By letters of January 8 and 21, 2016, Plaintiffs' legal counsel reminded Defendants that *Consumers Power* did not apply to statutory initiatives, and that *Wolverine Golf Club* continued to bind them as to statutory initiatives.

18. Plaintiffs' legal counsel testified to Defendants to the same effect on March 24, 2016. On this occasion, in response to a specific query about *Wolverine Golf Club* and *Consumers Power*, Defendant Williams' then-serving predecessor in office, Christopher Thomas, admitted that the Secretary of State's Bureau of Elections had been treating petitions under Const 1963, art 2, § 9 the same as petitions under art 12, § 2:

> MR. BOAL: So whatever else you decide, the Attorney General's opinion [OAG 4813] continues to bind you as to statutory initiatives. It was only overturned as to constitutional initiatives [by *Consumers Power*]. I've said this before. I've asked for anybody who disagrees with me to say that they disagree with me,

including Chris Thomas, including John Griffin, who is back here representing the oil and gas industry, and no one has come forward with any counter argument to that. So I consider that this stands, you know, unrebutted.

. . .

MR. THOMAS: I guess I would only say I don't have a case to cite about a legislative initiative. I would say we have applied it to a legislative initiative as we've canvassed petitions ever since the 1986 case. So I guess there is a feeling that if it's good for one, it's good for the other. I don't see anything that specifically would say that if 180 days is good for getting ten percent of the vote, why wouldn't it be good for getting eight percent of the vote? So we have operated under it just so. I take your point. I don't have a case and I don't have anything else. But just so the record's clear, we have operated that way.[14]

19. On June 9, 2016, the Legislature enacted 2016 PA 142, which amended MCL 168.472a by replacing the preceding rebuttable presumption of staleness to signatures over 180 days old with the irrebuttable preclusion of such signatures from being counted. As amended, the wording of MCL 168.472a now states:

> The signature on a petition that proposes an amendment to the constitution or is to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state.

20. In the Governor's press release announcing his signing of the amendatory bill enacted as 2016 PA 142, the Governor asserted no objective related to the voter registration status of petition signers, but rather attributed it the purpose of "help[ing] ensure the issues that make the ballot are the ones that matter most to Michiganders."[15]

---

14 Exhibit 5.

15 Office of Governor Rick Snyder, *Gov. Rick Snyder Signs Bill Establishing 180-day Deadline for Petition Signatures on Proposed Legislation and Constitutional Amendments* (published June 7, 2016) <http://michigan.gov/snyder/0,4668,7-277-57577_57657-386394--,00.html> (accessed December 5, 2018).

B. <u>November 5, 2018 Petition Filing</u>

21. On April 14, 2015, CBFM provided Defendants with a pre-circulation copy of its statutory initiative petition as required by MCL 168.483a.[16] The initiative seeks to amend Part 615 of the Natural Resources and Environmental Protection Act[17] to ban horizontal fracking and frack waste in the state, eliminate the state's statutory pre-WWII policy requiring environmental regulators to foster and maximize oil-gas production in the state, and substitute a requirement that they protect climate.

22. That same day, by a 3-0 vote, Defendant Board of State Canvassers approved the form of the petition, making note that approval did not "extend to … the substance" of the proposal on the back or the summary on the front.[18]

23. Shortly after the 2015 Board of State Canvassers vote, CBFM began to collect voter signatures. By June 1, 2016, CBFM had not yet collected the required 252,523 signatures. Plaintiffs sued in this Court seeking a declaratory judgment that MCL 168.472a's prohibition of counting signatures older than 180 days invalidly infringes the self-executing provisions of Const 1963, art 2, § 9 under the same constitutional principle pronounced by *Wolverine Golf Club*.

24. Defendants contended in response:

16 Exhibit 1, last two pages.
17 1994 PA 451, MCL 324.101 et seq.
18 Exhibit 1, first page.

> If and when Plaintiffs obtain the signatures they require, then they would be able to file their petition. But until the minimum number of signatures has been collected, any application of MCL 168.472a to CBFM's petition is hypothetical.[19]

25. As Defendants well knew, the date they said this was less than two weeks before the 2016 election, when it would have been far too late to file signatures, get them canvassed, and get the CBFM initiative on that ballot. Hence, Defendants assured that Plaintiffs "would be able to file their petition" for a future election after 2016 upon collecting the remaining quantity of signatures needed to satisfy the threshold .

26. Accepting Defendants' argument, this Court dismissed Plaintiffs' action on ripeness grounds, finding that it was speculative and hypothetical whether CBFM would be able to collect the full number of signatures required.[20]

27. On March 14, 2017, the Court of Appeals affirmed this Court's dismissal, observing that CBFM was "*continuing to collect signatures with the same petition sheets*," but had not yet reached the ripened point of having collected and filed the threshold number of signatures required.[21]

28. After the Courts' ripeness ruling, CBFM changed its target election from 2018 to 2020, and continued collecting signatures.

---

19 Brief of Defendants-Appellees, *CBFM v Director of Elections*, Court of Appeals Case No. 334480 at 4 (October 27, 2016).

20 *CBFM v Director of Elections*, No. 16-000122-MM (Court of Claims, August 8, 2016).

21 *CBFM v Director of Elections*, No. 334480, 2017 Mich App LEXIS 405 at *2, 8 (March 14, 2017) (emphasis added).

29. On November 5, 2018, Plaintiff Kozma tendered for filing to Defendants 47 boxes containing approximately 270,962 signatures (over 18,000 more than the threshold required), having done just what Defendants and this Court said was needed to ripen their challenge to the validity of MCL 168.472a.

30. Spurning the assurances of the preceding litigation, Defendant Williams and her office staff rejected the petition filing, refused to take custody of the 47 boxes, and refused to notify Defendant Board of State Canvassers that CBFM had filed. Pointing to the front-page petition summary's reference to the 2016 election, of which Defendants were fully cognizant in the prior proceedings, they said the summary was "incorrect."[22]

31. However, the 2016 voting date was neither correct nor incorrect. It was and could only be an expectation, as evidenced for instance by (a) the date's absence in the full text on the back, (b) other circulated ballot petitions which canvassers have approved over the years that had a voting date in the front-page summary but never appeared on the ballot, sometimes because petitions were strategically not filed and sometimes because the Legislature enacted the initiative without a ballot vote, or (c) the tens of thousands of people (including the current Governor-Elect who signed last April 22) who signed the CBFM petition after the election in November 2016 when it was obvious the election had passed.

---

22 Exhibit 2.

32. Defendant Williams' staff further attributed its refusal to take custody of the petitions to lacking adequate room at its office, but acknowledged that necessary room could be made if ordered to accept such filing by the court.

33. Defendant Williams' staff also provided CBFM a copy of MCL 168.471 (which determines the "filing" deadline for initiative petitions), and acknowledged that the Board of State Canvassers could overrule their decision.

34. Plaintiff Kozma departed with the boxes in a rented moving van. After negotiating with three other companies, Plaintiffs retained Kent Records Management three days later, on November 8, to store them securely at its facility where they presently remain secured.[23]

35. Defendants have not promulgated any rule in compliance with the Administrative Procedures Act[24] respecting the rejection of petition filings by the Secretary of State.

36. In every election cycle through the present, Defendants Johnson and Williams, along with their predecessors in office, have accepted election petitions for filing and review by the Board of State Canvassers irrespectively of their own preliminary assumption of facial defects.[25]

---

23 Plaintiffs are presently continuing to incur a cost of $79/month for petition storage with Kent Records Management. Plaintiffs were also compelled to expend $567.22 for the costs of two additional days of van rental and three additional nights of motel lodging in the Lansing area.

24 MCL 24.201 *et seq*.

25 See, e.g., *Morgan v Board of State Canvassers*, unpublished order of the Court of Appeals, issued June 8, 2018 (Docket No. 344108) (failure to include candidate address on petition heading); *Delaney v Bd. of State Canvassers*, Docket No. 333410, 2016 Mich App LEXIS 1170 (June 16, 2016) (same); *Tea Party v Board of State*

37. Because the day following Plaintiffs' petition filing, November 6, 2018, was the next occurring general election at which a Governor was elected, any filing of CBFM's signatures after November 5 would have barred them from compliance with MCL 168.473b. As stated by Defendants to the Court of Appeals during the prior proceedings:

> [U]nder MCL 168.473b, signatures collected prior to a general election in which a governor is elected cannot be filed after that election. So, even if this Court were to accept CBFM's argument regarding MCL 168.472a, they must collect all of the necessary signatures in time . . . for the 2018 election, or any signatures they have collected will be discarded anyway.[26]

38. Filing on November 5 was also critical for CBFM because, under Const 1963, art 2, § 9, the number of required signatures is determined by the number of voters who cast ballots for Governor, and that number was projected to and did increase substantially from the 2018 Gubernatorial election vote total.

CBFM's attempts to remedy Defendants' refusal to recognize the filing

39. On November 6, 2018, CBFM filed an action for emergency mandamus relief against Defendants Johnson and Williams in the Court of Appeals, seeking an immediate order that same day so as to exercise all possible due diligence to forefend against Defendants' attempt to obstruct their compliance with MCL

Canvassers, unpublished order of the Court of Appeals, issued August 30, 2010 (Docket No. 299805) (petition heading failing to conform to statutory font size requirement).

26 Brief of Defendants-Appellees, *CBFM v Director of Elections*, Court of Appeals Case No. 334480 at 4 (October 27, 2016).

168.473b.[27] Because the Court of Appeals did not take emergency action on CBFM's petition that day, CBFM filed a motion for leave to amend its complaint on November 8, 2018, noting that the relief requested in its original complaint had become moot. On November 15, 2018, the Court of Appeals entered an order, without accompanying opinion, denying CBFM's then-moot original complaint for mandamus as well as its motion to amend the complaint.

40. On November 15, 2018, Plaintiff Kozma and legal counsel appeared at that date's scheduled Board of State Canvassers meeting to argue verbally and in writing[28] that Defendant Board of State Canvassers should recognize that CBFM "filed" its petition on November 5, 2018, overrule Defendant Williams' action, and order Defendants to take possession of the 47 boxes so the canvassing process can begin. CBFM's counsel noted that, as co-defendants in the prior litigation, the Board itself had joined Defendants' October 2016 Court statement that "when [CBFM] obtain[s] the additional signatures they require, then they would be able to file their petition."

41. In spite of Plaintiffs' request, Defendant Board of State Canvassers took no action related to Plaintiffs' petition and did not place the matter on its next following meeting's agenda.

COUNT I: CONST 1963, ART 2, § 9
(Against all Defendants)

27 *CBFM v Johnson et al*, Case No. 346280.
28 Exhibit 3.

42. Plaintiffs incorporate by reference all preceding paragraphs as though repeated herein.

43. Because the language of Const 1963, art 2, § 9 summons no legislative aid in the areas of circulating and signing, the Legislature's extension of MCL 168.472a to statutory initiative petitions unlawfully infringes the reserved legislative powers of the people by curtailing the operation of the self-executing constitutional provision governing the statutory initiative process.[29]

44. Because Const 1963 art 2, § 12's included call for legislative regulation is what "distin[guishes]" that section from other self-executing constitutional provisions "and indeed provides the authorization for the Legislature to have enacted MCL 168.472a" as applied to initiatives thereunder,[30] it follows inescapably that no such authorization exists for 472a's extension to initiatives under art 2, § 9.

45. The omission by Michigan's constitutional framers of any similar such legislative regulatory authorization under art 2, § 9 is a reflection of that section's critically distinct purpose "as an express limitation on the authority of the Legislature."[31]

46. Because neither the Attorney General nor any court has overruled the finding of OAG 1974, No. 4813, as applied to initiatives under Const 1963, art 2, § 9,[32]

---

29 See *Wolverine Golf Club,* 384 Mich at 466.

30 *Consumers Power Co*, 426 Mich at 9.

31 *Woodland v Mich Citizens Lobby*, 423 Mich 188, 214; 378 NW2d 337 (1985).

32 Since 2016 PA 142's later amendment to MCL 168.472a only increased the stringency of the legislative restriction deemed invalid by the Attorney General, OAG 4813 extends *a fortiori* to 472a's current form.

Defendants' present policy of enforcing 168.472a's 180-day exclusion of voter signatures on statutory initiative petitions contravenes Defendants' executively bound duty to abide formal attorney general opinions.[33]

47. Even if the Legislature were constitutionally vested the power to regulate the initiative process prescribed by art 2, § 9 in parallel to that prescribed by art 12, § 2, MCL 168.472a's absolute 180-day time limit for collecting signatures, as presently amended by 2016 PA 142, constitutes an undue restraint on the "jealously guard[ed]"[34] public right of initiative and the expressed will of those voters whose signatures are barred from effect.[35]

48. As correspondingly confirmed by the Governor's declaration as to 2016 PA 142's purpose of further heightening initiative qualifying hurdles, the presently amended version of MCL 168.472a is not reasonably tailored to the constitutionally-derived interest of ensuring that only registered electors may propose citizens' initiatives.[36]

33 See *Mich Beer & Wine Wholesalers Ass'n v Attorney General*, 142 Mich App 294, 300; 370 NW2d 328 (1985).

34 *Ferency v Secretary of State*, 409 Mich 569, 601; 297 NW2d 544 (1980).

35 Even in view of art 12, § 2's legislative regulatory authorization, the Supreme Court predicated its upholding of MCL 168.472a's restriction on constitutional amendatory initiative petitions on the since-legislatively-reversed fact that:

> The statute does not set a 180-day time limit for obtaining signatures. The statute itself establishes no such time limit. It states rather that if a signature is affixed to a petition more than 180 days before the petition is filed it is presumed to be stale and void. But that presumption can be rebutted. [*Consumers Power Co*, 426 Mich at 8].

36 Compare *Consumers Power Co*, 426 Mich at 7-8 (noting, with respect to constitutional amendatory initiatives, that "the purpose" of 472a's then-rebuttable staleness presumption applied to signatures older than 180 days was "to fulfill the constitutional directive of art 12, § 2 that only the registered electors of this state may

49. In present form, the practical effect of 472a's 180-day restriction is to hamper the opportunity for successful grassroots initiative petition campaigns relying principally on part-time volunteers; thereby subjecting citizens' initiatives to the same precondition of well-financed special interest support that art 2, § 9 was formulated to circumvent.

COUNT II: EQUITABLE ESTOPPEL
(Against all Defendants)

50. Plaintiffs incorporate by reference all preceding paragraphs as though repeated herein.

51. With full knowledge of both the content of Plaintiffs' petition form and their intent to file their initiative for the 2018 election or later, Defendants expressly affirmed during the proceedings of the parties' initial 2016-17 civil case that Plaintiffs would be able to file their petition if and when they collect the remaining number of petition signatures needed to satisfy the constitutional threshold.

52. Accordingly, having since marshaled and invested thousands more volunteer hours and tremendous expense to collect the additional 64,000 voter signatures needed, equity demands Defendants' estoppel from now relying on the extraneous election date referenced in Plaintiffs' petition form summary in order to reject acceptance of their filing.

---

propose a constitutional amendment.").

53. Upon having unlawfully refused to accept possession of Plaintiffs' petition at the time of filing on November 5, 2018, Defendants are additionally estopped from now relying on such refusal in order to deny recognition to Plaintiffs' petition's pre-election filed status.

COUNT III: CONST 1963, ART 2, § 9
(Against Defendants Johnson and Williams)

54. Plaintiffs incorporate by reference all preceding paragraphs as though repeated herein.

55. "[T]he initiative process should be interfered with neither by the legislature . . . nor the officers charged with any duty in the premises."[37]

56. Because the operation of the initiative process fundamentally depends on the ability of an initiative sponsor to file a completed petition for canvassing, Defendants' assumption of the power to capriciously refuse custody of a timely filed petition is a constitutionally impermissible "*administrative* encroachment on the people's right to propose laws . . . through the petition process."[38]

COUNT IV: MICHIGAN ELECTION LAW
(Against Defendants Johnson and Williams)

57. Plaintiffs incorporate by reference all preceding paragraphs as though repeated herein.

---

37 *Frey v Dep't of Mgt & Budget*, 429 Mich 315, 338; 414 NW2d 873 (1987) (internal quotation marks omitted).

38 *Ferency*, 409 Mich at 601 (emphasis in original).

58. CBFM's change of its target ballot date from 2018 to 2020 is a distinction without a difference, and without legal significance for this litigation.

59. MCL 168.471 (which sets the "filing" deadline) has no definition of "filing," and so must be interpreted according to customary usages of English.[39] Accordingly Plaintiffs' acknowledged act of tendering signatures on November 5, 2018, was an act of filing them.

60. Whether the form of initiative petitions conforms to state election law requirements falls to the determination of the Board of State Canvassers.[40]

61. No provision of Michigan law and nothing in Defendants' prescribed format for statutory initiative petitions[41] requires or contemplates the inclusion of reference to any particular election in the language presented on a petition sheet. Thus, the included reference to the 2016 election in the summary text is entirely superfluous, without any bearing on the petition's strict compliance with all legislatively and administratively prescribed requirements, and should be disregarded.

62. Defendants are legally required to immediately notify the Board of State Canvassers

39 MCL 8.3a.

40 See *Auto Club of Mich Comm for Lower Rates Now v Board of State Canvassers (On Remand)*, 195 Mich App 613, 624; 491 NW2d 269 (1992); *Citizens Protecting Mich's Constitution v Secretary of State*, _ Mich App _, _; _ NW2d _ (June 7, 2018) (Docket No. 343517), slip op at 12, aff'd _ Mich _ (2018) (Docket No. 157925); *Mich Civil Rights Initiative v Board of State Canvassers*, 268 Mich App 506, 516; 708 NW2d 139 (2005).

41 See MCL 168.482; 168.544c; 168.544d; Mich Dep't of State, Initiative and Referendum Petitions, *supra* n 7 at 6-13; *Stand Up For Democracy v Secretary of State*, 492 Mich 588, 603; 822 NW2d 159 (2012) (identifying the statutory sections governing petition form requirements).

of the filing of an initiative petition so as to enable the Board's canvass and determination of its legal sufficiency and compliance.[42]

63. Defendants have no legal authority to refuse to accept the filing of a petition or to preempt and usurp the Board of State Canvassers' determination as to the conformity of a petition to state election law requirements.

COUNT V: EQUAL PROTECTION
(Against Defendants Johnson and Williams)

64. Plaintiffs incorporate by reference all preceding paragraphs as though repeated herein.

65. The Equal Protection Clause of the Michigan Constitution guarantees that "[n]o person shall be denied the equal protection of the laws."[43]

66. The Equal Protection Clause of the federal Constitution guarantees that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."[44]

67. Because Defendants have consistently accepted receipt of filed petitions in spite of their own preliminary assumption of facial defects, and have, upon information and belief, never before refused to accept possession of a petition tendered for filing, Defendants' invidiously capricious attempt at rejecting Plaintiffs' petition filing has

42 MCL 168.475; see MCL 168.476-77(1).
43 Const 1963, art 2, § 1.
44 US Const, Am XIV.

deprived Plaintiffs of equal protection of the laws contrary to Const 1963, art 2, § 1 and US Const, Am XIV.

RELIEF REQUESTED

68. Wherefore Plaintiffs ask this Court to:

A. Declare that Plaintiffs filed their petition on November 5, 2018, and enjoin Defendants Johnson and Williams to take possession of the petition from Kent Records Management and Plaintiffs and provide official notice of such filing to Defendant Board of State Canvassers pursuant to MCL 168.475(1);

B. Declare that the extraneous election-date reference in the petition's front-page proposal summary does not preclude the petition's statutory compliance;

C. Declare that MCL 168.472a is unconstitutional as applied to statutory initiatives under Const 1963, art 2, § 9, and enjoin Defendants from applying it to discount voter signatures on statutory initiative petitions; and

D. Grant any other relief that the Court deems just and equitable.

Respectfully submitted,

/s/ Ellis Boal
Ellis Boal (P10913)
Counsel for Plaintiffs
9330 Woods Road
Charlevoix, MI 49720
231.547.2626
ellisboal@voyager.net

/s/ Matthew Erard
Matthew Erard (P81091)
Counsel for Plaintiffs
400 Bagley St. #939
Detroit, MI 48226
248.765.1605
mserard@gmail.com

Dated: December _____, 2018.

Verification

I declare that the statements above are true to the best of my information, knowledge, and belief:

_____
Ellis Boal

Signed and sworn to before me this ____ day of December, 2018.
_____, notary public _____ county, Michigan.
My commission expires: _____