

Exhibit 1



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

**Meeting
of the
Board of State Canvassers**

**April 14, 2015
Richard H. Austin Building, 4th Floor
Lansing, Michigan**

Called to order: 10:30 a.m.

Members present: Jeannette Bradshaw – Chairperson
Norman Shinkle – Vice-Chairperson
Julie Matuzak
Colleen Pero

Members absent: None.

Agenda item: Consideration of meeting minutes for approval.

Board action on agenda item: Motion to approve minutes of February 26, 2015 meeting as submitted. Moved by Matuzak; supported by Pero. Ayes: Bradshaw, Shinkle, Matuzak, Pero. Nays: None. Motion carried.

Agenda item: Consideration of initiative petition form submitted for approval by the Committee to Ban Fracking in Michigan, P.O. Box 490, Charlevoix, Michigan 49720.

Board action on agenda item: The Board moved to approve the initiative petition form submitted by the Committee to Ban Fracking in Michigan with the understanding that the Board's approval does not extend to: (1) the substance of the proposal which appears on the petition; (2) the substance of the summary of the proposal which appears on the signature side of the petition, or (3) the manner in which the proposal language is affixed to the petition. Moved by Matuzak; supported by Bradshaw. Ayes: Bradshaw, Matuzak, Pero. Nays: None. Pass: Shinkle. Motion carried.

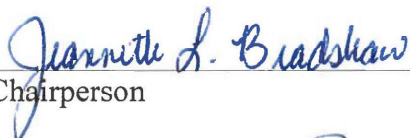
Agenda item: Consideration of whether the recall petition filed on March 25, 2015 by Ryan Flamand states factually and clearly each reason for the recall of Berrien County Treasurer Bret Witkowski.

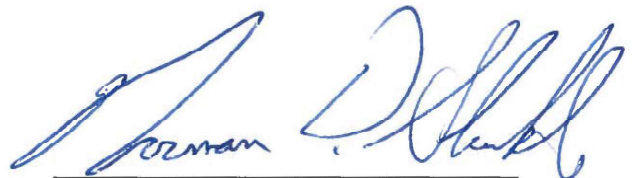
Board action on agenda item: The Board moved that the recall petition filed by Ryan Flamand on March 25, 2015 does not state factually and clearly each reason for the recall of Berrien County Treasurer Bret Witkowski. Moved by Pero; supported by Matuzak. Ayes: Bradshaw, Shinkle, Matuzak, Pero. Nays: None. Motion carried.

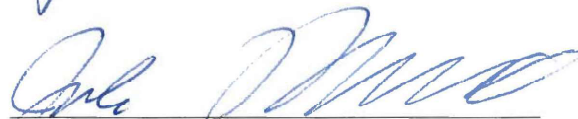
Agenda item: Such other and further business as may be properly presented to the Board.

Board action on agenda item: None. (General discussion regarding Board of State Canvassers Procedural Rules, R 168.841 *et seq.*)

Adjourned: 11:31 a.m.


Chairperson


Vice-Chairperson


Member


Member

5-26-2015
Date

INITIATION OF LEGISLATION

An initiation of legislation to prohibit the use of horizontal hydraulic fracturing or “fracking” and acid completion treatments of horizontal gas and oil wells; to prohibit emission, production, storage, disposal, and processing of frack and acidizing wastes created by gas and oil well operations; to eliminate the state’s policy favoring ultimate recovery of maximum production of oil and gas; to protect water resources, land, air, climate, and public health; and to allow residents to enforce the provisions of this ballot language, by amending Public Act 451 of 1994 entitled “Natural Resources and Environmental Protection Act,” by amending section 61502 and by adding sections 61528, 61529 and 61530. This proposal is to be voted on in the November 8, 2016 General Election. THE FULL TEXT OF THE LEGISLATION TO BE INITIATED APPEARS ON THE REVERSE SIDE OF THIS PETITION.

We, the undersigned qualified and registered electors, residents in the county of _____, State of Michigan, respectively petition for initiation of legislation.

WARNING – A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					MO	DAY	YEAR
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	1.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	2.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	3.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	4.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	5.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	6.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	7.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	8.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	9.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	10.						

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township indicated preceding the signature, and the elector was qualified to sign the petition.

☐ If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the secretary of state or a designated agent of the secretary of state has the same effect as if personally served on the circulator.

WARNING – A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.

Paid for with regulated funds by the Committee to Ban Fracking in Michigan, P.O. Box 490, Charlevoix, MI 49720



CIRCULATOR – Do not sign or date certificate until after circulating petition.

(Signature of Circulator)	_____	/	_____	(Date)
(Printed Name of Circulator)	_____			
(Complete Residence Address (Street and Number or Rural Route)) Do not enter a post office box	_____			
(City or Township, State, Zip Code)	_____			
(County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan)	_____			

INITIATION OF LEGISLATION

FULL TEXT OF THE LEGISLATIVE PROPOSAL
(Language added to the statute is shown in capital letters and deleted language is struck out with a line):

An initiation of legislation to prohibit the use of horizontal hydraulic fracturing or “fracking” and acid completion treatments of horizontal gas and oil wells; to prohibit emission, production, storage, disposal, and processing of frack and acidizing wastes created by gas and oil well operations; to eliminate the state’s policy favoring ultimate recovery of maximum production of oil and gas; to protect water resources, land, air, climate, and public health; and to allow residents to enforce the provisions of this ballot language, by amending Public Act 451 of 1994 entitled “Natural Resources and Environmental Protection Act,” by amending section 61502 and by adding sections 61528, 61529 and 61530 to read as follows:

The People of the State of Michigan enact:

MCL 324.61502 Construction of part.

SEC. 61502. It has long been the declared policy of this state to foster conservation of natural resources AND TO PROVIDE FOR THE PROTECTION OF THE AIR, WATER, AND OTHER NATURAL RESOURCES FROM POLLUTION, IMPAIRMENT, AND DESTRUCTION. ~~so that our citizens may continue to enjoy the fruits and profits of those resources. Failure to adopt such a policy in the pioneer days of the state permitted the unwarranted slaughter and removal of magnificent timber abounding in the state, which resulted in an immeasurable loss and waste. In an effort to replace some of this loss, millions of dollars have been spent in reforestation, which could have been saved had the original timber been removed under proper conditions.~~ In past years extensive deposits of oil and gas have been discovered that HAVE BEEN EXTRACTED USING WELLS THROUGH WHICH OIL OR GAS FLOWED NATURALLY OR WAS PUMPED TO THE SURFACE. THE RECENT USES OF HIGH INTENSITY HORIZONTAL HYDRAULIC FRACTURING AND ACID WELL STIMULATION AND COMPLETION TREATMENTS ARE DIFFERENT AND TYPICALLY INCLUDE INJECTIONS OF LARGE AMOUNTS OF WATER, SOLVENTS, ACIDS, AND OTHER CHEMICALS TO FRACTURE OR DISSOLVE UNDERGROUND FORMATIONS HORIZONTALLY, THE CONSEQUENCES OF WHICH POLLUTE, IMPAIR, AND DESTROY OUR WATER RESOURCES, LAND, AIR, CLIMATE, AND PUBLIC HEALTH. ~~have added greatly to the natural wealth of the state and if properly conserved can bring added prosperity for many years in the future to our farmers and landowners, as well as to those engaged in the exploration and development of this great natural resource.~~ The interests of the people demand that THE EXPLORATION OF OIL AND GAS SHALL NOT BE DONE AT THE EXPENSE OF THE NATURAL ENVIRONMENT AND HUMAN HEALTH. ~~exploitation and waste of oil and gas be prevented so that the history of the loss of timber may not be repeated.~~ It is accordingly the declared policy of the state to protect the interests of its PEOPLE AND ENVIRONMENT DURING GAS AND OIL DEVELOPMENT. ~~citizens and landowners from unwarranted waste of gas and oil and to foster the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products. To that end, this~~ THIS part is to be construed liberally to give effect to sound policies of conservation and the prevention of waste and exploitation, AND TO PROTECT WATER RESOURCES, LAND, AIR, CLIMATE, HUMAN HEALTH, AND THE NATURAL ENVIRONMENT.

MCL 324.61528 HORIZONTAL HYDRAULIC FRACTURING OR FRACKING; ACID WELL STIMULATION TREATMENTS FOR HORIZONTAL WELLBORES; WASTES CREATED OR PRODUCED BY CERTAIN WELLS AND STIMULATION TREATMENTS; PROHBITED.

SEC. 61528. (1) TO ENSURE THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE PEOPLE AND TO PROTECT WATER RESOURCES, LAND, AIR, AND CLIMATE, NO PERSON, CORPORATION, OR OTHER ENTITY SHALL USE, NOR SHALL THE DEPARTMENT PERMIT (A) HORIZONTAL HYDRAULIC FRACTURING OR FRACKING; OR (B) ACID WELL STIMULATION TREATMENTS OF HORIZONTAL WELLBORES; NOR SHALL A PERSON, CORPORATION, OR OTHER ENTITY EMIT, STORE, PROCESS, OR OTHERWISE DISPOSE OF, FRACK AND ACIDIZING WASTES USED IN OR PRODUCED AS A RESULT OF DRILLING, STIMULATION, COMPLETION, OR PRODUCTION OF WELLS USING HORIZONTAL HYDRAULIC FRACTURING OR ACID WELL STIMULATION TREATMENT, INCLUDING WASTES ORIGINATING FROM INSIDE OR OUTSIDE OF THE STATE.

(2) DEFINITIONS

(A) “HORIZONTAL HYDRAULIC FRACTURING OR FRACKING” MEANS THE TECHNIQUE OF EXPANDING OR CREATING ROCK FRACTURES LEADING FROM SUBSTANTIALLY HORIZONTAL WELLBORES, BY INJECTING SUBSTANCES INCLUDING BUT NOT LIMITED TO WATER, FLUIDS, CHEMICALS, AND PROPPANTS, UNDER PRESSURE, INTO OR UNDER ROCK FORMATIONS, FOR PURPOSES OF EXPLORATION, DRILLING, COMPLETION, OR PRODUCTION OF OIL OR NATURAL GAS.

(B) “ACID WELL STIMULATION TREATMENT” MEANS THE TECHNIQUE OF APPLYING ONE OR MORE ACIDS TO THE WELL OR UNDERGROUND FORMATION FOR THE PURPOSES OF EXPLORATION, DRILLING, COMPLETION, OR PRODUCTION OF OIL OR NATURAL GAS. THESE TECHNIQUES INCLUDE ACID MATRIX STIMULATION TREATMENTS AND ACID FRACTURING TREATMENTS.

(C) “FRACK AND ACIDIZING WASTES” MEANS SUBSTANCES AND WASTES USED IN OR PRODUCED AS A RESULT OF DRILLING, STIMULATION, COMPLETION, OR PRODUCTION OF OIL OR GAS WELLS USING HORIZONTAL HYDRAULIC FRACTURING OR ACID WELL STIMULATION TREATMENT, INCLUDING WASTES ORIGINATING FROM INSIDE OR OUTSIDE OF THE STATE, AND INCLUDES ANY OF THE FOLLOWING:

- (i) FLUIDS OR SUBSTANCES CONSISTING OF, BUT NOT LIMITED TO, WATER, CHEMICALS, ACIDS, SOLVENTS, PROPPANTS, AND ADDITIVES THAT MAKE UP FRACTURING OR ACIDIZING TREATMENTS.
- (ii) BRINES, FLOWBACK, PRODUCED WATER, RESIDUAL FLUIDS, DRILLING MUDS, SLUDGE, AND DRILL CUTTINGS.
- (iii) CHEMICALS EMITTED INTO THE AIR.

MCL 324.61529 SEVERABILITY.

SEC. 61529. THE PROVISIONS OF THIS PART ARE SEVERABLE. IF ANY COURT DECIDES THAT ANY SECTION, SUBSECTION, CLAUSE, SENTENCE, PORTION, OR PROVISION OF THIS PART IS ILLEGAL, INVALID, OR UNCONSTITUTIONAL, SUCH DECISION SHALL NOT AFFECT, IMPAIR, OR INVALIDATE ANY OF THE REMAINING SECTIONS, SUBSECTIONS, CLAUSES, SENTENCES, PORTIONS, OR PROVISIONS. THE PEOPLE OF MICHIGAN INTEND FOR ANY PART OF SECTIONS 61502, 61528, 61529 AND 61530 TO REMAIN IN EFFECT DESPITE ANY POSSIBLE INVALIDATION BY SUCH DECISIONS.

MCL 324.61530 CITIZEN STANDING PROVISION.

SEC. 61530. ANY MICHIGAN RESIDENT MAY ENFORCE SECTIONS 61502 AND 61528 THROUGH AN ACTION BROUGHT IN ANY COURT POSSESSING JURISDICTION OVER THE LAND WHERE ANY ALLEGED VIOLATING ACTIVITY OCCURS. IN SUCH AN ACTION, THE RESIDENT IS ENTITLED TO RECOVER ALL COSTS OF LITIGATION, INCLUDING, WITHOUT LIMITATION, EXPERT AND ATTORNEY’S FEES. THESE COSTS OR FEES WILL NOT BE AWARDED AGAINST THE RESIDENT.

2015 APR -9 PM 3: 54

BUREAU OF ELECTIONS
MI DEPT OF STATE

Exhibit 2



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

November 5, 2018

TO WHOM IT MAY CONCERN:

On this date, the Committee to Ban Fracking in Michigan, tendered an Initiative Petition for the Initiation of Legislation, which contains the following heading:

An initiation of legislation to prohibit the use of horizontal hydraulic fracturing or "fracking" and acid completion treatments of horizontal gas and oil wells, to prohibit emission, production, storage, disposal, and processing of frack and acidizing wastes created by gas and oil well operations; to eliminate the state's policy favoring ultimate recovery of maximum production of oil and gas; to protect water resources, land, air, climate, and public health; and to allow residents to enforce the provisions of this ballot language, by amending Public Act 451 of 1994 entitled "Natural Resources and Environmental Protection Act," by amending section 61502 and by adding sections 61528, 61529 and 61530. This proposal is to be voted on in the November 8, 2016 General Election.

The Initiative Petition tendered by the Committee to Ban Fracking in Michigan incorrectly states that it "is to be voted on in the November 8, 2016 General Election." Accordingly, the Initiative Petition tendered by the Committee to Ban Fracking in Michigan, which the Committee to Ban Fracking in Michigan estimates consists of 47 boxes containing approximately 51,980 petition sheets bearing approximately 270,962 signatures, was rejected by the Secretary of State on this date by Sally Williams, Director of Elections.

Exhibit 3

ELLIS BOAL
ATTORNEY

9130 ^{Wood}BOYNE CITY ROAD, CHARLEVOIX, MICHIGAN 49720
231/547-2626 • ~~FAX 231/547-2628~~

ellisboal@voyager.net
November 15, 2018

Board of State Canvassers
430 W Allegan
Lansing, MI 48918
elections@michigan.gov

Sent via email 11-14-18
Hand-delivered 11-15-18

Re: Elections bureau's refusal to allow filing of statutory initiative signatures

Dear Canvassers:

I write as counsel to the Committee to Ban Fracking in Michigan (CBFM). My co-counsel is Matt Erard, cc'd below.

As set out in the attached mandamus complaint of last week in the court of appeals, two years ago CBFM sued the director of elections, secretary of state, and the board of canvassers, seeking a declaration that the 180-day time limit of MCL 168.472a for collecting signatures for a statutory initiative is unconstitutional. In 2017 the court of appeals held the action unripe, saying CBFM was free to bring it again once we file the signatures. See the attached 2017 decision.

I write today about a new matter which arose only 10 days ago, on November 5, the day before the election. The next day, November 6, we filed a mandamus complaint in the court of appeals against the secretary of state and director of elections, noting they had refused to accept signatures. The court took no immediate action, so we amended the complaint a day later, November 7. Our papers in case # 346280 are attached, defendants have answered, and we await a court ruling.

However there need be no court ruling, should you decide to overrule the director as to the events of November 5, a power that you have, as conceded by Ms. Williams' agent Melissa Malerman in conversation that day.

Background: CBFM is a ballot question committee aiming now to place a

statutory initiative on the 2020 ballot. The proposed ballot language can be viewed here: <http://letsbanfracking.org> . Generally it seeks to ban horizontal fracking and frack waste in the state, eliminate the state's statutory pre-WWII policy requiring environmental regulators to maximize oil-gas production and foster the oil-gas industry, and substitute a requirement that they protect climate.

Without specifying any particular election year in the order, this board approved the format of the petition sheets on April 14, 2015, by 3-0, with member Shinkle present but refusing to vote, in effect recusing himself without stating a reason. See exhibit 1 to the initial mandamus complaint.

Prior to the 2018 election the required number of valid signatures to achieve ballot status was 252,523. Since many more people voted for governor this year compared to the last election, that minimum jumped by 10's of thousands as of November 6. So it was critical that we file signatures before the election.

We did that. The afternoon of November 5 we delivered 47 boxes of signatures summing to more than the minimum, to the elections bureau on Allegan Street. Ms. Malerman, on behalf of Ms. Williams, rejected filing of the signatures, claiming a statement on the petition sheets was "incorrect."

"[T]he Initiative petition tendered by the Committee to Ban Fracking in Michigan, which the Committee to Ban Fracking in Michigan estimates consists of 47 boxes containing approximately 51,980 petition sheets bearing approximately 270,962 signatures, was rejected by the Secretary of State on this date by Sally Williams, Director of Elections."

Exhibit 2 to the initial mandamus complaint.

We argued the point for some 20 minutes, asking that the bureau take possession of the signatures and refer them to the canvassers, in the course of which Ms. Malerman acknowledged (as noted above) that the canvassers had power to overrule Ms. Williams. She refused to take the signatures.

We left with the 47 boxes. Eventually and at considerable expense, after inquiring to three other companies we were able find a secure location for them at Kent Record Management Inc. See the attached amended and supplemented mandamus complaint.

We filed the mandamus case the next day. But you may act without waiting for the court to act, as noted above.

The “incorrect” statement claimed by Ms. Williams was this: The sheets have a summary of the proposed ballot language on the front, and the full text on the back. The summary on the front includes this at the end:

“This proposal is to be voted on in the November 8, 2016 General election. THE FULL TEXT OF THE LEGISLATION TO BE INITIATED APPEARS ON THE REVERSE SIDE OF THIS PETITION.”

The reference to the 2016 election was what was “incorrect,” according to Ms. Williams.

(CBFM need not explain why it included a voting date on the sheet -- which was not a legal requirement -- but we will: At the time we hoped and expected to get enough signatures in time for the 2016 election. We also knew, as you do, that statutory ballot petition sheets historically have customarily included such language. Finally, we were influenced by the existence of the 180-day statute, and had not yet researched to realize it was unconstitutional. Should the court eventually invalidate it, that would be an important factor in assessing our effort to comply with the statute, by putting a voting date in the summary.)

But the 2016 voting date was neither correct nor incorrect. It was only a prediction, as evidenced by the other circulated ballot petitions which you have approved over the years that had similar language, but never appeared on the ballot. It is also evidenced by the tens of thousands of people who signed the CBFM petition after November 2016 when it was obvious that date had passed.

Importantly, signers were directed in capital letters to the back side for the full text, where the summary is repeated but without a predicted election date.

As noted in the initial mandamus complaint at ¶ 15, nothing in Michigan election law or the SOS rules for statutory initiative petitions contemplates that the summary include reference to a particular election date.

Finally and perhaps most importantly, as you will see in ¶¶ 9 and 11 of the initial mandamus complaint, the defendants in the 2016 case including this board all stated explicitly that CBFM would be free to file signatures using the same sheets when we reached the minimum of 252,523. On October 27, 2016, after the deadline for getting on the 2016 ballot had passed, and knowing the summary on the sheets referred to that election, through counsel you wrote:

“If and when Plaintiffs obtain the additional signatures they require, then they would be able to file their petition.”

The court knew it too, noting that CBFM was “continuing to collect signatures with the same petition sheets.” You cannot go back on your word.

Defendants' opposition to the mandamus case, filed yesterday, acknowledges that you said this, and they said it too. (The court of appeals said the same, noting that CBFM was “continuing to collect signatures with *the same petition sheets*” (emphasis added).) But defendants assert that they/you were only “speculating,” and besides they/you were referring to collection for CBFM's then-goal of 2018, not 2020.

Defendants' opposition acknowledges that CBFM's petition “was rejected for filing” on November 5. The rejection was, defendants claim, pursuant to MCL 168.471, which refers to “filing” but has no definition of the word.

CBFM's change of its goal from 2018 to 2020 is a distinction without a difference.

Defendants' only case citation is *O'Connell v Director of Elections*, 317 Mich App 82, 86-87 (2016). *O'Donnell* involved a false affidavit by a candidate, which was not just a prediction but false from day 1, that he was an “incumbent” judge when he was not. The case turned on the definition of “incumbent,” and the constitution's “criteria for incumbency ... could not be plainer,” the court said.

By contrast this case turns on the definition of “filing” in MCL 168.471, a term which has no definition other than the common usages of English.

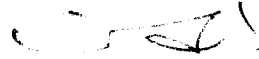
According to these, “filing” and “tendering” are one and the same. CBFM did everything it could possibly do to “file” its signatures, by showing up timely with 47 boxes at the election bureau. CBFM did file but Ms. Williams refuses to acknowledge it.

We are not asking today that you decide whether there is or is not anything wrong with the summary. We only ask that you order Ms. Williams to take possession of the signatures from Kent Record Management, and process them in the usual way for canvassing. When the issue of the propriety of the summary language comes properly before you, we will provide additional argument.

Finally, we expect member Shinkle to again recuse himself. Whatever his reason

3½ years ago – and he cannot claim to remember it clearly now after so much time – it still applies today when the same petition is before him.

Very truly yours,



Ellis Boal

Encl: Committee to Ban Fracking in Michigan et al v Director of Elections, Secretary of State, and Board of State Canvassers, COA Decision, Case No. 334480, 3/14/17

Plaintiff's Emergency Complaint And Motion For Writ Of Mandamus, 11-6-18

Emergency Motion For Same-Day Immediate Consideration, 11-6-18

Motion to Amend and Supplement the Complaint, 11-7-18

Amended and Supplemented Complaint, 11-7-18

- c: Matt Erard, 400 Bagley, Apt 939, Detroit, MI, 48226, 248-765-1605
LuAnne Kozma, CBFM, Box 490, Charlevoix, MI, 49720, 231-944-8750
Ruth Johnson, SCS, 430 W Allegan, Lansing, MI, 48918, 517-373-2510
Sally Williams, Elections, 430 W Allegan, Lansing, MI, 48918, 517-373-2540
Bill Schuette, AG, 525 W Ottawa, Box 30212, Lansing, MI, 48909, 517-373-1110
Jocelyn Benson, SOS Elect, 19310 Berkeley, Detroit, MI 48221, 313-409-9737
Dana Nessel, AG Elect, 645 Griswold, Detroit, MI, 48226, 313-556-2300

Exhibit 4

not pass upon its constitutionality, and such reference is not a binding interpretation of law, but is mere dicta.

The 1947 opinion of the attorney general did not overrule the 1943 opinion. Although it made reference to 1941 PA 299, § 11b, *supra*, the opinion did not purport to pass upon the constitutionality of the statute and should not be construed as determining that the act is constitutional.

In conclusion, since neither of the latter references to the statute, either by the Supreme Court or by the subsequent opinion of the attorney general, considered the constitutionality of the statute, neither of these latter authorities detracts from the legal effect of the earlier opinion of the attorney general.

Further, since the legislature has known of this determination of unconstitutionality of the statute since 1943 and has taken no steps to remedy the constitutional defects by which the Commissioner of Revenue could discharge that duty, it is clear that 1923 PA 151, § 11b, *supra*, is and remains unconstitutional to the extent of and for the reasons expressed herein and those expressed in OAG, 1943-1944, No 0-953, *supra*.²

FRANK J. KELLEY,
Attorney General.

740813.1

CONSTITUTIONAL LAW: Amendments

CONSTITUTIONAL LAW: Initiative

ELECTIONS: Constitutional Amendment

ELECTIONS: Initiative

A statute providing that signatures affixed to petitions proposing a constitutional amendment or initiation of legislation more than 180 days prior to filing are rebuttably presumed to be stale and void is invalid.

Opinion No. 4813

August 13, 1974.

Honorable Gary Byker
State Senator
The Capitol
Lansing, Michigan 48901

You have asked for my opinion concerning the constitutionality of § 472a, as amended, of the Michigan Election Law, MCLA 168.472a; MSA 6.1472(1), which provides that signatures affixed to a petition pro-

² This opinion does not consider the possible constitutional defects discussed in OAG, 1943-1944, No 0-953, *supra*, at p 475:

"All these extraordinary powers are subject to no control by any court and no notice of any exercise of these powers is provided for. It is probably unconstitutional under the XIVth Amendment of the Constitution of the United States and the Constitution of the State of Michigan." [Emphasis supplied.]

posing an amendment to the State Constitution or to a petition proposing initiation of legislation are rebuttably presumed to be stale and void if affixed more than 180 days before the petition was filed with the office of the Secretary of State. The statute does not provide what type or quantum of proof is sufficient to overcome the presumption.

Petitions proposing initiation of legislation are authorized by Const 1963, art 2, § 9:

"The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative . . . The power of initiative extends only to laws which the legislature may enact under this constitution . . . To invoke the initiative . . . petitions signed by a number of registered electors, not less than eight percent . . . of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

* * *

"The legislature shall implement the provisions of this section."

This provision has been held to be self-executing. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466; 185 NW2d 392 (1971). 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. . . ." [*Wolverine Golf Club v Secretary of State*, *supra*, at 466]

I am consequently of the opinion that, as applied to signatures affixed to petitions which initiate legislation pursuant to Const 1963, art 2, § 9, § 472a of the Michigan Election Law is beyond the legislature's power to implement said section and is therefore unconstitutional and unenforceable.

Petitions to propose amendments to the State Constitution are authorized by Const 1963, art 12, § 2. Unlike art 2, § 9, that provision does not contain any general statement to the effect that the legislature is authorized to implement any of its provisions. The first paragraph of art 12, § 2, sets forth the requirements of the petition and the gathering of signatures:

"Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the

signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon."

The delegations of authority to the legislature to implement this provision are very explicit and pertain to designation of the official who has the duty to receive the petitions, the form and manner of circulation, and the method of canvassing.

In view of the fact that section 472a confronts proponents of constitutional amendment petition drives with the dilemma of choosing between the burden of gathering all of the signatures within 180 days and the burden of overcoming a rebuttable presumption of staleness while not knowing the kind or quantity of evidence to be marshaled, it is doubtful that a court would construe the legislature's delegated power to provide by law for the "manner" in which such petitions shall be "signed and circulated" as including the authority to prescribe a specific time frame within which the signatures must be affixed. It would be more reasonable to expect that the court would give such provision a more limited construction, as was the case in *Wolverine Golf Club v Secretary of State*, *supra*, with reference to even broader language found in art 2, § 9.

Consequently, I am of the opinion that, with regard to signatures affixed to petitions proposing amendment to the State Constitution pursuant to Const 1963, art 12, § 2, § 472a of the Michigan Election Law is unconstitutional.

The case of *Hamilton v Secretary of State*, 221 Mich 541; 191 NW2d 829 (1923), provides further support for the contention that section 472a of the Election Law is unconstitutional pursuant to both Const 1963, art 12, § 2, and art 2, § 9. In that case the Secretary of State argued that signatures to an initiatory petition must be attached within a reasonable time before its filing. The Secretary of State contended that inasmuch as signatures on the petitions before him ran back as far as 20 months, the petition was not filed within a reasonable time. The plaintiff argued that no time limit was established for signatures contained on initiatory petitions. Although no statute was involved in the case the holding of the Court and the reasoning it used to arrive at this holding makes the *Hamilton* case directly applicable to the problem before us:

"The constitutional provision [1908 Const, art 17, § 2] contains procedural rules, regulations and limitations; it maps the course and marks the way for the accomplishment of an end; it summons no legislative aid and will brook no elimination or restriction of its requirements; it grants rights on condition expressed, and if its provisions are complied with and its procedure followed its mandate must be obeyed. Its provisions are prospective in operation and self-executing. The vote for governor every two years fixes the basis for determining the number of legal voters necessary to sign an initiatory petition and start designated official action.

"This primary essential to any step at all fixes distinct periods within which initiatory action may be instituted. A petition must start out for signatures under a definite basis for determining the necessary

number of signatures and succeed or fail within the period such basis governs.

* * *

" . . . The identity of the petition was inseparably linked with the basis it sought to comply with, and as an initiatory petition it could not and did not survive the passing of such basis and then identify itself with a new basis wholly prospective in operation . . . The Constitution plainly intends an expression of an existing sense of a designated percentage of the legal voters. Such sense may be expressed after any biennial election for governor, and if in percentage of legal voters signing the petition it meets the basis under which it was circulated, it becomes effective upon filing the same with the secretary of State at least four months before the basis is changed by a subsequent vote for governor." [pp 544-546]

In other words, petitions and the signatures affixed to them are valid for as long as a particular basis (votes cast) remains in effect. 1963 Const, art 12, § 2, and art 2, § 9, both provide that the requisite number of signatures to initiative petitions is to be determined by a set percentage of votes cast for all candidates for governor at the last preceding general election at which a governor was elected. Therefore, the term for governor determines the time periods during which petitions may be circulated for signature and any signatures gathered during such a period are valid. Under 1963 Const, art 5, § 21, the governor serves a period of four years. Hence, signatures on petitions are to be considered valid so long as they are gathered during a single four-year term bounded on both sides by a gubernatorial election.

FRANK J. KELLEY,
Attorney General.

740814.1

COUNTIES: Board of Health; Board of County Commissioners

Board of health of a county health department may negotiate labor contracts with its employees, which contracts are subject to approval of the board of county commissioners.

A county board of health cannot execute contracts without approval of the board of county commissioners.

A board of county commissioners may regulate fees and charges of persons employed by county board of health in executing health laws and their own regulations.

Opinion No. 4825

August 14, 1974.

Honorable Earl E. Nelson
State Representative
The Capitol
Lansing, Michigan 48901

You raise three issues concerning the respective authority and duties of a county health board in relation to the county board of commissioners.

Exhibit 5

BOARD OF STATE CANVASSERS MEETING

March 24, 2016

Prepared by



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STATE OF MICHIGAN
DEPARTMENT OF STATE
RUTH JOHNSON, SECRETARY OF STATE

BOARD OF STATE CANVASSERS MEETING
The State Capitol Building, Room 426, Lansing, Michigan
Thursday, March 24, 2016, 3:00 p.m.

BOARD: MS. JEANNETTE BRADSHAW - Chair
MR. NORM SHINKLE - Vice Chair
MS. COLLEEN PERO - Board Member
MR. CHRISTOPHER THOMAS - Elections Director
MS. MELISSA MALERMAN - Elections Staff

APPEARANCES:

For the State: MS. DENISE C. BARTON (P41535)
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1 a notary. In fact, the state has all sorts of forms of
2 affidavits that don't require a notary. Traditionally, I
3 think most people consider an affidavit to require a notary.
4 But the problem with the vagueness of that is we don't know
5 what's acceptable. So we don't want to go through and have
6 100,000 people sign something that won't work when we turn
7 it in. So thank you.

8 MS. BRADSHAW: Thank you much.

9 MR. HANK: Sure.

10 MS. BRADSHAW: Thank you very much. Okay. Ellis
11 Boal?

12 REPORTER: Please state your full name and spell
13 it for me.

14 MR. BOAL: First name Ellis, that's E-l-l-i-s.
15 Last name Boal, spelled B, as in "boy," -o-a-l. A few
16 minutes ago I heard Chris Thomas referred to as Chris rather
17 than Mr. Thomas. I like that. I like first names. Please
18 call me Ellis, if you care to speak with me.

19 Just a few quick comments. It looks like there
20 will not be a vote today. Had there been a vote, I would be
21 questioning the propriety of that, being an absent member,
22 but I guess that's moot.

23 Just an additional point to what Jeff Hank said to
24 you a moment ago about the continuing bindingness of the
25 four-year governor's term. And he didn't mention an

1 important Supreme Court case called Wolverine Golf Club,
2 which was relied on by the Attorney General. And the reason
3 why Wolverine Golf Club, a 1971 case, is -- and it was cited
4 for you in our letters in January. The reason that's
5 important is because the Wolverine Golf Club addresses
6 statutory initiatives, whereas the Consumers Power case,
7 which has been before this Board before, was only about
8 constitutional initiatives. And so the Consumers Power case
9 upheld the constitutionality of 472a, but it made reference
10 only to Article XII, Section 2. There's no reference
11 whatsoever in that opinion about Article II, Section 9. And
12 John Pirich, the attorney for the plaintiffs in that case,
13 told you in 1986, in his letter of the day before, that that
14 opinion was only as applied to constitutional initiatives.
15 So whatever else you decide, the Attorney General's opinion
16 continues to bind you as to statutory initiatives. It was
17 only overturned as to constitutional initiatives. I've said
18 this before. I've asked for anybody who disagrees with me
19 to say that they disagree with me, including Chris Thomas,
20 including John Griffin, who is back here representing the
21 oil and gas industry, and no one has come forward with any
22 counter argument to that. So I consider that this stands,
23 you know, un rebutted.

24 Finally, the last point, I'm not sure it's
25 necessary to say this before this Board. But I made a

1 factual error in my written testimony to the Elections
2 Committee last week, and I'm going to correct that to the
3 Elections Committee. But I just would like to make it
4 public right now, because the same error may have been
5 stated by our literature. What I said to the Elections
6 Committee was collectors for Michigan's well-liked Bottle
7 Bill used this period, meaning the governor's term. And
8 I've come to realize that that's not correct, that the
9 Bottle Bill signatures were collected in an approximately
10 two-month period. However, there was a Michigan Court of
11 Appeals case called Line v The State of Michigan from 1988
12 which stated that numerous petitions were collected --
13 signatures collected using more than the 180-day period.
14 The Bottle Bill was not specifically stated as one of them,
15 but there are numerous examples of petitions having been
16 submitted. Some were enacted, some not, but they were
17 accepted. So I just wanted to make that -- correct that
18 error. Any questions?

19 MS. BRADSHAW: Questions from the Board? Thank
20 you very much. Or unless there is Chris.

21 MR. THOMAS: I guess I would only say I don't have
22 a case to cite about a legislative initiative. I would say
23 we have applied it to a legislative initiative as we've
24 canvassed petitions ever since the 1986 case. So I guess
25 there is a feeling that if it's good for one, it's good for

1 the other. I don't see anything that specifically would say
2 that if 180 days is good for getting ten percent of the
3 vote, why wouldn't it be good for getting eight percent of
4 the vote? So we have operated under it just so. I take
5 your point. I don't have a case and I don't have anything
6 else. But just so the record's clear, we have operated that
7 way.

8 MR. BOAL: My initial reaction when I first got
9 involved in this controversy was the same as Chris'; that if
10 it applies to one, why wouldn't it apply to the other. But
11 the legislative history of Article XII, Section 2, and
12 Article II, Section 9 are different. They were enacted four
13 years -- five years apart. One was in 1908, the other in
14 1913. The Wolverine Golf Club case, which was about
15 Daylight Savings Time and held unconstitutional part of the
16 Election Law which had stood for 30 years and yet it was
17 overturned by Wolverine Golf Club, was specifically about
18 Article II, Section 9. There were two opinions of the Court
19 of Appeals judges in that case and an opinion of a
20 dissenting Court of Appeals judge, and both of the two
21 concurring majority opinions of the Court of Appeals were
22 referred to and complimented -- I forget the exact words of
23 the Supreme Court -- as compelling the conclusion that the
24 time period involved in that case, which was a time period
25 prior to -- for submitting the petitions, not a collection

1 period but it still had to do with the time period; that
2 that provision was unconstitutional under Article II,
3 Section 9. So I commend to you, please, to read the
4 Wolverine Golf Club case, which was cited by Frank Kelly and
5 was not overruled by Consumers Power. Thank you.

6 MS. BRADSHAW: Thank you very much.

7 MR. THOMAS: I believe the statute that he's
8 referring to in that case was the statute required that
9 initiatives be filed ten days before the beginning of the
10 legislative session. And that's what was thrown out. And I
11 would say it was so much nicer to argue about Daylight
12 Savings Time than all these other topics.

13 MS. PERO: It was getting dark so --

14 MR. THOMAS: Yes.

15 MS. BRADSHAW: Mr. Alan Fox, please.

16 REPORTER: Please state your full name and spell
17 it.

18 MR. FOX: It's Alan Fox, A-l-a-n F-o-x.

19 MS. BRADSHAW: It's public comments so no worries.

20 MR FOX: Oh, this is not -- okay. I thought it
21 was always public comment.

22 MR. THOMAS: You don't have to tell the truth.

23 MR. FOX: Okay. I don't know when to stop telling
24 the truth.

25 MS. PERO: Do you feel more comfortable now?