

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



18
P.O. Box 30217
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

June 11, 2019

Clerk of the Court
Michigan Court of Claims
Hall of Justice
Lansing, Michigan 48933

Re: *Committee to Ban Fracking, et al v Johnson, et al*
Court of Claims No. 18-000274-MM

Dear Clerk:

Enclosed please find an original and a Judge's copy of Defendants' Supplemental Brief in Support of March 7, 2019 Motion for Summary Disposition with attached Proof of Service, for filing in the above matter.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather S. Meingast".

Heather S. Meingast
Assistant Attorney General
517.335.7659

HSM/lsa
Enclosures

cc: Ellis Boal (w/enc)
Matthew Erard (w/enc)

STATE OF MICHIGAN
COURT OF CLAIMS

COMMITTEE TO BAN FRACKING IN
MICHIGAN and LUANNE KOZMA,

Plaintiffs,

No. 18-000274-MM

v

HON. MICHAEL J. KELLY

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

**DEFENDANTS' SUPPLEMENTAL
BRIEF IN SUPPORT OF MARCH 7,
2019 MOTION FOR SUMMARY
DISPOSITION**

Defendants.

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Charlevoix, Michigan 49720
231.546.2626

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**DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF
MARCH 7, 2019 MOTION FOR SUMMARY DISPOSITION**

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INTRODUCTION

This Court issued an order requesting that the parties brief whether the doctrine of res judicata bars Plaintiffs' action before the Court. Defendants submit that while the second and third elements of res judicata appear to be satisfied, it is unclear whether the first element—a prior final decision on the merits—is met.

ARGUMENT

I. The Michigan Supreme Court's decision in *Hoffman v Silverthorn* may preclude application of res judicata on the facts of this case.

"The doctrine of res judicata is intended to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation." *Bryan v JP Morgan Chase Bank*, 304 Mich App 708, 715 (2014) (quotation marks and citation omitted).

For res judicata to preclude a claim, three elements must be satisfied: "(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Adair v State*, 470 Mich 105, 121 (2004), citing *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575 (2001). Michigan courts have "taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Id.*

A. It is unclear whether the prior mandamus action was decided on the merits.

For res judicata to apply, the Court of Appeals' November 15, 2018 order denying mandamus relief must constitute a final judgment on the merits. That order stated only that "the complaint for mandamus is denied." (Ex 1).

As this Court noted in its sua sponte order, MCR 7.215(E)(1) provides that when the "Court of Appeals disposes of an original action . . . its opinion or order is its judgment." But a different court rule generally describes what is considered a "final judgment" or "final order," defining those to mean, in a civil case, "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties" MCR 7.202(6)(a)(i). Certainly, the November 15 order disposed of the mandamus action, but it is unclear that it can be considered an adjudication or decision on the merits of the claims/issues raised by Plaintiffs where no rationale or analysis was given for the denial of mandamus relief. See, e.g., *Reynolds v Bureau of State Lottery*, 240 Mich App 84, 104 (2000) ("we will not consider the order denying the motion [to dismiss appeal], made without any reasoning provided, to be a decision on the merits of the issues advanced").¹

¹ Generally, "[t]o be accorded the conclusive effect of res judicata, the judgment must ordinarily be a firm and stable one, the 'last word' of the rendering court[.]" *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 381 (1994) (quotation marks and citation omitted). Thus, neither orders granting temporary relief "until . . . further order" of the court, *id.*, nor interlocutory orders, *Indiana Ins Co v Auto-Owners Ins Co*, 260 Mich App 662, 671 n. 8 (2004), generally carry preclusive effect under res judicata. See also *Andrews v Donnelly*, 220 Mich App 206, 209-210 (1996) (hung jury not an adjudication on the merits for res judicata).

In *Hoffman v Silverthorn*, the Michigan Supreme Court addressed whether mandamus proceedings can have res judicata effect. 137 Mich 60, 64 (1904). There, the plaintiff had previously initiated a mandamus proceeding relating to a property transaction in the Supreme Court, which complaint was denied “without any written opinion being filed.” *Id.* at 63-64. The same plaintiff thereafter filed an action for ejectment as to the property and prevailed in the trial court. *Id.* at 62. The defendants appealed, and argued, among other things, that the mandamus proceeding was res judicata. *Id.* at 64.

The Court observed that “[i]f the decision in the mandamus proceedings was made upon the merits, we think that decision would be decisive between the parties to that proceeding and their privies.” *Id.* (citation omitted). The Court continued, however, that “[i]t does not follow, because the mandamus was denied, that the court passed upon the merits of plaintiff’s application.” *Id.* The Court further explained:

That mandamus may have been denied because no case was made that appealed to the discretionary power of the court, because relator had a manifest legal remedy of which he could not be deprived, or because mandamus was not the proper remedy. If the mandamus was denied for either of these reasons, no authority need be cited to the proposition that that decision was not res judicata. Though the members of this cour[t] might ascertain by consulting their own recollections the precise ground upon which that decision proceeded, it is obvious to the slightest reflection that such a course cannot be adopted. [*Id.*]

The *Hoffman* Court noted that “[t]here are authorities which hold that when there are several issues presented, and a general judgment rendered, it will be presumed that all issues were decided in favor of the prevailing party.” *Id.* at 65 (citations omitted). But the Court continued, “the better authority, in our judgment,

is opposed to this doctrine, and casts upon the party asserting that such a judgment determined a particular issue the burden of proving it.” *Id.* (citations omitted). The Court then concluded that “there was no evidence before the lower court tending to prove upon what ground the decision was made,” and “that court correctly decided that the mandamus proceedings were not res judicata.” *Id.*

Hoffman has not been overruled or called into question with respect to its holding that a denial of mandamus relief without any written opinion is not res judicata.

In the earlier mandamus proceeding, Plaintiffs argued that neither Defendant was authorized to reject outright Plaintiffs’ petition based on the alleged facial defect, which made the filing untimely, and thus Defendants had a clear legal duty to accept the petition and present it to the Board of State Canvassers for review. (Ex 2, Mandamus Compl). Defendants responded to the complaint, arguing that neither Defendant had a clear legal duty to accept Plaintiffs’ petition for filing because of the defect and timeliness issue. (Ex 3, Defs’ Response). Defendants did not argue that Plaintiffs had another or different legal remedy.

Presumably, the Court of Appeals panel agreed with Defendants’ argument that the petition was defective and that Defendant Johnson, through Defendant Williams, was authorized to reject the filing (and thus had no duty to accept the petition). But, as in *Hoffman*, that cannot be determined with certainty from the order; it is possible that the Court denied the complaint for some other reason not articulated by Defendants. The decision in *Hoffman* appears to require a conclusion

that the November 15 order denying mandamus relief is not a decision on the merits for purposes of res judicata.

B. The parties are the same in both actions.

The second element of res judicata is met here. Plaintiffs in this case—the Committee and Ms. Kozma—are the same Plaintiffs as in the 2018 mandamus action. Defendants—Director Williams and former Secretary of State Johnson—are the same Defendants as in the mandamus action. *Sloan v Madison Heights*, 425 Mich 288, 295 (1986) (“actions must be between the same parties or their privies”).

C. Plaintiffs’ new claims could have been brought in the prior mandamus action.

The third element necessary for the application of res judicata is also met. That element requires that the matters raised here were resolved, or could have been resolved, in the prior mandamus proceeding. *Adair*, 470 Mich at 121.

Again, in the mandamus proceeding, Plaintiffs argued that neither Defendant was statutorily authorized to reject outright Plaintiffs’ petition based on the alleged facial defect, which made the filing untimely, and thus Defendants had a clear legal duty to accept the petition and present it to the Board of State Canvassers for review. Plaintiffs sought only mandamus relief. (Ex 2, Mandamus Compl). Here, Plaintiffs seek a declaratory judgment and raise various statutory and constitutional violations and equitable estoppel arising out of the same transaction as the mandamus proceeding—Defendants’ refusal to accept the petition for filing. *Adair*, 470 Mich at 124-125.

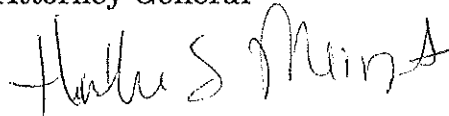
As discussed above, it is unclear what matters were resolved in the mandamus proceeding, other than that Plaintiffs were not entitled to relief. But clearly Plaintiffs could have raised the claims brought here in the prior mandamus action. See MCR 3.301(B) (other claims may be joined in an action for a writ).

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth in Defendants' principal brief and reply brief, Defendants respectfully request that this Court grant summary disposition and dismiss Plaintiffs' complaint with prejudice.

Respectfully submitted,

DANA NESSEL
Attorney General

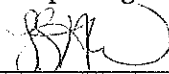


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Dated: June 11, 2019

PROOF OF SERVICE

Lisa S. Albro certifies that on the 11 day of June, 2019, she served a copy of the above document in this matter on all counsel of record and parties *in pro per* at their last known addresses via first class mail by depositing same in a United States Post Office depository in Lansing, Michigan with first class postage fully paid.



Lisa S. Albro

Court of Appeals, State of Michigan

ORDER

Committee to Ban Fracking in Michigan v Secretary of State

Docket No. 346280

Douglas B. Shapiro
Presiding Judge

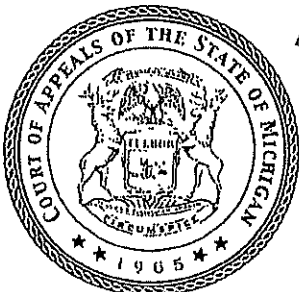
Jane E. Markey

Michael J. Kelly
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The Court orders that the motion to amend the complaint is DENIED.

The Court orders that the complaint for mandamus is DENIED.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 15 2018

Date


Chief Clerk

**STATE OF MICHIGAN
COURT OF APPEALS**

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Plaintiff,

Court of Appeals No.

v

RUTH JOHNSON, in her official capacity
as Secretary of State, and SALLY WILLIAMS,
in her official capacity as Director of Elections,

Defendants.

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**PLAINTIFF'S EMERGENCY COMPLAINT AND MOTION FOR
WRIT OF MANDAMUS**

PARTIES

1. Plaintiff Committee to Ban Fracking in Michigan (CBFM) is a ballot question committee¹ properly formed under the laws of the State of Michigan and headquartered in Charlevoix. Through the efforts of over 800 volunteers from 60 Michigan counties, it has collected over 270,000 petition signatures from Michigan voters for a statutory initiative pursuant to Mich Const art, 2, § 9.
2. Defendant Ruth Johnson is Michigan's Secretary of State and is responsible for receiving the filing of Plaintiff's statutory initiative petition,² and immediately notifying the Board of State Canvassers thereof,³ so as to enable the Board to canvass the petition and determine its legal sufficiency.⁴
3. Defendant Sally Williams is the Director of Elections for Michigan's Department of State and is responsible for administering the Department of State division charged with receiving election petition filings on the Secretary of State's behalf.⁵

¹ MCL 169.202(3).

² MCL 168.471.

³ MCL 168.475.

⁴ MCL 168.476-77.

⁵ MCL 168.32(1).

JURISDICTION

4. This Court has original jurisdiction over actions for mandamus brought against state officers pursuant to MCL 600.4401(1) and MCR 3.305(A)(1) and 7.203(C)(2).

GENERAL ALLEGATIONS

5. This is an original action to compel Defendants to accept the timely filing of Plaintiff's petition today, November 6, 2018 and provide proper notice of such filing to the Board of State Canvassers.
6. On April 14, 2015, the Board of State Canvassers approved as to form Plaintiff's statutory initiative petition prior to the commencement of its circulation for voter signatures. (Exhibit 1).
7. Concurrently, with its submission for approval as to form, Plaintiff provided Defendants with an official copy of the petition for their own records as required by MCL 168.483a(2).
8. On June 1, 2016, Plaintiff and CBFM Director LuAnne Kozma filed an action in the Court of Claims seeking a declaratory judgment that MCL 168.472a, prohibiting the counting of signatures dated more than 180 days prior to the date of filing, invalidly infringes the self-executing provisions of Mich Const 1963, art 2, § 9 under the same constitutional principle set forth by *Wolverine Golf Club v Secretary of State*, 384 Mich 461; 185 NW2d 392 (1971).

9. Because Plaintiff had not yet collected the 252,523 signatures required for a statutory initiative petition, Defendants contended that:

If and when Plaintiffs obtain the additional 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.⁶

10. Accepting Defendants' argument, the Court of Claims dismissed Plaintiff's action on ripeness grounds, finding that it was then speculative and hypothetical whether Plaintiff would be able to collect the full number of signatures required.⁷
11. On March 14, 2017, this Court affirmed the Court of Claims' dismissal, observing that Plaintiff was "*continuing to collect signatures with the same petition sheets*," but had not yet reached the ripened point of having "collected the number of required petition signatures, albeit during a timeframe outside the 180-day rule, filed those petitions at least 160 days before the election, had those petitions rejected by defendants as insufficient, and then had their ballot proposal denied."⁸

⁶ Brief of Defendants-Appellees, *Committee to Ban Fracking in Michigan v Director of Elections*, Court of Appeals Case No. 334480 at 4 (October 27, 2016).

⁷ *Comm to Ban Fracking in Michigan v Director of Elections*, No. 16-000122-MM (Court of Claims, August 8, 2016).

⁸ *Comm to Ban Fracking in Michigan v Director of Elections*, No. 334480, 2017 Mich. App. LEXIS 405 at *2, 8 (March 14, 2017) (emphasis added).

12. Having done exactly what Defendants and this Court asserted to be needed to sufficiently ripen their claim for resolution by collecting the additional signatures required to meet the constitutional threshold, Plaintiff's Director, LuAnne Kozma, personally tendered approximately 270,962 signatures to Defendants' Bureau of Elections Office on November 5, 2018.
13. In complete turnabout from Defendants' assurances throughout the preceding litigation, Defendant Williams then directed her office staff to refuse to accept the petition filing due to the petition heading's included reference to the November 8, 2016 election, of which Defendants had been fully cognizant throughout such prior judicial proceedings. (Exhibit 2)
14. Defendants' staff further attributed such refusal to take custody of the petitions to lacking adequate room at the office, but acknowledged that necessary room could be made if ordered to accept such filing by the Court.
15. Neither any provision of the Michigan Election Law nor the Secretary of State's prescribed format for statutory initiative petitions requires or contemplates the inclusion of reference to any particular election in the language presented on a petition sheet.⁹

⁹ See MCL 168.482; 168.544c; 168.544d; Memorandum from the Secretary of State, Initiative and Referendum Petitions — Prescribed Format (Revised June 2011) at 6-13,

16. Consequently, the 2016 reference included on Plaintiff's petition sheet is entirely superfluous and without bearing on the petition's strict compliance with all legislatively and administratively prescribed requirements.
17. In every election cycle through the present, Defendants have consistently accepted election petitions for filing and sufficiency determination by the Board of State Canvassers in spite of their own preliminary assumption of facial defects.¹⁰
18. As directly noted by Defendants during the aforementioned prior proceedings before this Court:

[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.¹¹

http://michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf; *Stand Up For Democracy v. Secretary of State*, 492 Mich. 588, 603; 822 NW2d 159 (2012) (identifying the statutory sections governing petition form requirements).

¹⁰ See e.g. *Matthew Morgan v Board of State Canvassers*, unpublished order of the Court of Appeals, issued June 8, 2018 (Docket No. 344108); *Delaney v. Bd. of State Canvassers*, No. 333410, 2016 Mich. App. LEXIS 1170 (June 16, 2016) (failure to provide include candidate address); *Tea Party v Board of State Canvassers*, unpublished order of the Court of Appeals, issued August 30, 2010 (Docket No. 299805).

¹¹ Brief of Defendants-Appellees, *Committee to Ban Fracking in Michigan v Director of Elections*, Court of Appeals Case No. 334480 at 4 (October 27, 2016).

19. Accordingly, because today's date of November 6, 2018 constitutes that of the next occurring general election at which a governor is to be elected,¹² any filing of Plaintiff's signatures after today's date will bar them from compliance with MCL 168.473b.

COUNT I - MANDAMUS

20. "Mandamus is the appropriate remedy for a party seeking to compel action by election officials."¹³

21. In addition to determining a petition's sufficiency as to the requisite number of petition signatures, Michigan law directly assigns the Board of State Canvassers with the "final determination [of] . . . any deficiency found on the face of the petition that does not require verification against data maintained in the qualified voter file or in the voter registration files maintained by a city or township clerk."¹⁴

22. The Secretary of State has no legal authority to refuse to accept the timely filing of a petition or to preempt and usurp the Board of State Canvassers'

¹² MCL 168.60; 168.641(c)

¹³ *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 283; 761 NW2d 210, aff'd 482 Mich 960; 755 NW2d 157 (2008).

¹⁴ MCL 168.552(9); see *Auto Club of Mich Comm for Lower Rates Now v Bd of State Canvassers (On Remand)*, 195 Mich App 613, 624; 491 NW2d 269 (1992); *Delaney v. Bd. of State Canvassers*, No. 333410, 2016 Mich. App. LEXIS 1170 at *4-5 (June 16, 2016).

determination as to the conformity of Plaintiff's petition to state election law requirements.

23. Defendants have a clear legal duty to accept the filing of Plaintiff's petition and refer it to the Board of State Canvassers pursuant to MCL 168.475.

REQUEST FOR RELIEF

Wherefore Plaintiff respectfully requests that this Court enter an immediate writ of mandamus requiring Defendant to accept the filing of Plaintiff's statutory initiative petition on today's date or, in the alternative, provide injunctive or any other similar relief within the Court's discretion pursuant to MCR 7.216(7).

Respectfully submitted,

/s/ Ellis Boal

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/s/ Matthew Erard

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248.765.1605
mserard@gmail.com

Proof of Service

I hereby certify that, on November 6, 2018, I served the above document and appended exhibits on Defendants by personal service to Defendants' state office and the office of the Attorney General.

/s/ Ellis Boal
Ellis Boal

EXHIBIT 1:
Board of State Canvassers
Minutes and Filed Petition Sheet



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.

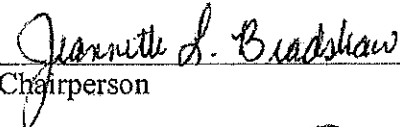
Agenda item: Consideration of whether the recall petition filed on March 25, 2015 by Ryan Flamand states factually and clearly each reason for the recall of Berrien County Treasurer Bret Witkowski.

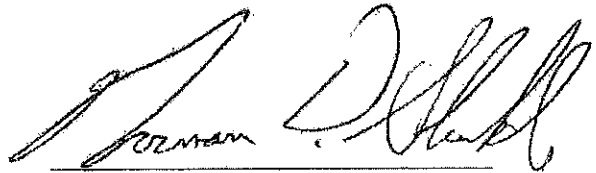
Board action on agenda item: The Board moved that the recall petition filed by Ryan Flamand on March 25, 2015 does not state factually and clearly each reason for the recall of Berrien County Treasurer Bret Witkowski. Moved by Pero; supported by Matuzak. Ayes: Bradshaw, Shinkle, Matuzak, Pero. Nays: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

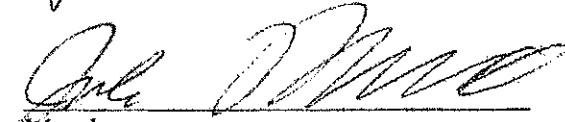
Agenda item: Such other and further business as may be properly presented to the Board.

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 61526, 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



(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; PROHIBITED.

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 5:45

BUREAU OF ELECTIONS
MI DEPT OF STATE

EXHIBIT 2:
November 5, 2018
Memorandum from
Defendant Williams



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.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Court of Appeals No. 346280

Plaintiff,

v

RUTH JOHNSON, IN HER OFFICIAL
CAPACITY AS SECRETARY OF STATE,
AND SALLY WILLIAMS IN HER
OFFICIAL CAPACITY AS DIRECTOR OF
ELECTIONS,

Defendants.

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S
EMERGENCY COMPLAINT AND MOTION FOR WRIT OF MANDAMUS**

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Dated: November 14, 2018

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COUNTER-STATEMENT OF JURISDICTION

This Court has original jurisdiction to entertain an action for “mandamus against a state officer.” MCR 7.203(C)(2), citing MCL 600.4401. Defendant Secretary of State is a “state officer,” see Const 1963, art 5, § 3; MCL 168.21, for purposes of mandamus relief. *Protect MI Constitution v Secretary of State*, 297 Mich App 553 (2012). Director of Elections Sally Williams is appointed by the Secretary of State and administers the election laws. MCL 168.32. She is also a state officer for purposes of mandamus relief. See, e.g, *Citizens for the Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 491 (2004). Therefore, this case is within the Court’s jurisdiction.

COUNTER-STATEMENT OF QUESTION PRESENTED

1. Whether Plaintiff's request for mandamus relief must be denied where Defendants had no clear legal duty to accept Plaintiff's faulty petition?

Defendants' answer: Yes.

Plaintiff's answer: No.

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

Const 1963, art 2, § 9 provides:

The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum 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.

Referendum, approval

No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

Initiative; duty of legislature, referendum

Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

Legislative rejection of initiated measure; different measure; submission to people

If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

Initiative or referendum law; effective date, veto, amendment and repeal

Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

Legislative implementation

The legislature shall implement the provisions of this section

MCL 168.471 provides:

Petitions under section 2 of article XII of the state constitution of 1963 proposing an amendment to the constitution shall be filed with the secretary of state at least 120 days before the election at which the proposed amendment is to be voted upon. Initiative petitions under section 9 of article II of the state constitution of 1963 shall be filed with the secretary of state at least 160 days before the election at which the proposed law is to be voted upon. Referendum petitions under section 9 of article II of the state constitution of 1963 shall be filed with the secretary of state not more than 90 days following the final adjournment of the legislative session at which the law that is the subject of the referendum was enacted.

MCL 168.473b provides:

Signatures on a petition to propose an amendment to the state constitution of 1963 or a petition to initiate legislation collected prior to a November general election at which a governor is elected shall not be filed after the date of that November general election.

INTRODUCTION

Plaintiff Committee to Ban Fracking in Michigan has been circulating the same petition to initiate legislation to ban fracking for three years. While this petition was originally approved as to form by the Board of State Canvassers in 2015, Plaintiff's inability to collect sufficient signatures during the 2016 general election cycle and the passage of time has rendered the petition defective. As approved and circulated, the petition stated that the proposal was to be "voted on in the November 8, 2016 General Election." That did not happen and is now, of course, an impossibility. As a result, when Plaintiff recently attempted to file its petition with Defendant Secretary of State it was rejected. On these facts, the Secretary of State had no duty to accept Plaintiff's petition for filing, and the Complaint for Mandamus must be denied.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

A prior opinion by this Court summarizes some of the facts relevant to the instant proceeding:

Plaintiff Committee to Ban Fracking in Michigan (CBFM) is engaged in a statutory initiative campaign that seeks to include a ballot option to ban horizontal hydraulic fracturing, which is commonly known as “fracking.” . . . Plaintiffs sought to have the issue on the 2016 ballot and, on April 14, 2015, the Board of State Canvassers approved the form of CBFM’s initiative petition. On May 22, 2015, plaintiffs began circulating their petitions and collecting signatures. By November 18, 2015, the 180th day, plaintiffs had collected over 150,000 signatures—but that was less than the required number of 252,523. By June 1, 2016, the deadline for filing initiative petitions for the November 2016 ballot, plaintiffs had over 207,000 signatures—but, again, that was less than the required number.

Plaintiff is apparently continuing to collect signatures with the same petition sheets in an effort to have the fracking issue on the November 2018 ballot. Accordingly, on June 1, 2016, plaintiffs filed this action challenging the 180-day rule set forth in MCL 168.472a. [*Comm to Ban Fracking in Michigan v Dir of Elections*, unpublished opinion of the Michigan Court of Appeals, Docket No. 334480, dec’d Mar. 14, 2017, attached as Ex. 1, pp 1-2 (footnotes omitted).]

The 180-day rule prohibits the counting of signatures on a petition that proposes an amendment to the constitution or to initiate legislation if the signature was made more than 180 days before the petition is filed with the Secretary of State. MCL 168.472a. Because it was taking Plaintiff so long to collect signatures, application of the 180-day rule to Plaintiff’s petition would have resulted in the discounting of stale signatures, potentially leaving Plaintiff without sufficient signatures to support its petition. But Plaintiff’s case challenging section 472a was dismissed for lack of an actual, live controversy because no adverse action had been taken as to Plaintiff or its petition by the State:

Plaintiffs, in effect, are claiming that they are unable to meet the 180-day rule set forth in MCL 168.472a with regard to their ballot initiative; thus, they filed this action seeking the declaration that the 180-day rule is unconstitutional. But this is not a “genuine, live controversy.” This is not a case in which plaintiffs have collected the number of required petition signatures, albeit during a time-frame outside the 180-day rule, filed those petitions at least 160 days before the election, had those petitions rejected by defendants as insufficient, and then had their ballot proposal denied. In fact, defendants had made no adverse claim and had taken no adverse action that impacted plaintiffs’ legal rights in any way before plaintiffs filed this action. That is, no controversy between the parties existed. Rather, plaintiffs are projecting that, in the future, if they ever collect the precise number of petition signatures required for their ballot initiative, they will be rejected by defendants because they do not meet the requirements of the 180-day rule. Thus, plaintiffs’ claim sets forth a possible—not actual—controversy that may arise in the future which rests upon contingent, uncertain events that may not occur at all and the injury plaintiffs seek to prevent is merely conjectural or hypothetical. [Ex. 1, p 4.]

Since the dismissal of its case, Plaintiff apparently continued to circulate its petition and obtain signatures. The day before the November general election, LuAnn Kozma contacted the Bureau and stated that representatives would arrive later in the day to file petitions. Plaintiff’s counsel arrived late in the day on November 5, 2018 and attempted to file the petition with the Bureau. The petition was rejected for filing by the Director of Elections because the petition inaccurately stated that the proposal was to be “voted on in the November 8, 2016 General Election.” (See Williams letter, Plfs’ Ex. 2 to Original Complaint).

Plaintiff filed the instant Complaint for Mandamus the next day, seeking emergency relief.

STANDARD OF REVIEW

Although courts have held that mandamus is the appropriate remedy for a party seeking to compel action by election officials, see, e.g., *Wolverine Golf Club v Secretary of State*, 24 Mich App 711 (1970), aff'd 384 Mich 461 (1971); *Automobile Club of Mich Committee for Lower Rates Now v Secretary of State (On Remand)*, 195 Mich App 613 (1992), a writ of mandamus remains an extraordinary remedy and will only be issued where: “(1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result.” *Citizens Protecting Michigan’s Constitution v Sec’y of State*, 280 Mich App 273, 284 (2008), aff’d in result, 482 Mich 960 (2008), citing *Tuggle v Dep’t of State Police*, 269 Mich App 657, 668 (2005). The specific act sought to be compelled must be of a ministerial nature, which is prescribed and defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment. *Citizens Protecting Michigan’s Constitution*, 280 Mich App at 286. “The burden of showing entitlement to the extraordinary remedy of a writ of mandamus is on the plaintiff.” *White-Bey v Dept of Corrections*, 239 Mich App 221, 223 (1999).

ARGUMENT

- I. A writ of mandamus may only issue when the requesting party demonstrates that it has a clear legal right to performance of the specific duty sought, and where the defendant has the clear legal duty to perform the act requested. Here, neither Defendant had a clear legal duty to accept Plaintiff's petition for filing because the filing was defective.**

Plaintiff's petition was rejected for filing because the face of the petition proposes that the initiative be voted on at the November 2016 General Election – an election that took place two years ago. Section 471, MCL 168.471, requires a petition proposing initiated legislation be filed with the Secretary of State “at least 160 days before the election at which the proposed law is to be voted upon.”

Plaintiff's petition did not meet that requirement and was properly rejected.

A. Overview of Defendants' duties with respect to petitions to initiate legislation.

1. Defendant Secretary of State.

The role of the Secretary with respect to the acceptance of initiative petitions for the general election ballot is limited. *Citizens Protecting Michigan's Constitution*, 280 Mich App at 286 (2008). The Secretary acts as the filing official to receive initiative petitions. MCL 168.471. Generally, the next task attendant to the Secretary's office is to “immediately” notify the Board of State Canvassers, by first-class mail, upon the filing of a petition. MCL 168.475(1). At that juncture, there is no clear legal duty imposed on the Secretary of State to take any further action with respect to an initiative petition. If the Board certifies the sufficiency of the petition and approves the statement of purpose, the Secretary then certifies the ballot

statement of purpose to the locals, MCL 168.648, and communicates the ballot wording to the media. MCL 168.477(2), MCL 168.480.

2. Board of State Canvassers.

Although not a defendant here, it is helpful to understand the Board's role in this process as well. The Board is a constitutional board created by Const 1963, art 2, § 7, and its duties and responsibilities are established by law. See MCL 168.22, MCL 168.841.¹ The Board's duties with respect to an initiative petition are two-fold. First, under MCL 168.476(1), the Board must canvass the petition to ascertain if the petition has been signed by the requisite number of qualified and registered voters. Second, under MCL 168.477(1), the Board "*shall* make an official declaration of the sufficiency or insufficiency of a petition under this chapter at least 2 months before the election at which the proposal is to be submitted." (Emphasis added). The declaration regarding the "sufficiency" of a petition includes whether the form of the petition complies with the relevant technical requirements.² Essentially, the Board determines whether the petition has enough valid signatures, and whether the petition is in the proper form.

¹ The Director of Elections is "a nonmember secretary of the state board of canvassers." MCL 168.32(1).

² As noted above, the statutes actually provide for the Board's review of the petitions after they have been circulated and signatures obtained. See MCL 168.475, 168.476, 168.477.

3. Defendant Director of Elections.

The Director of Elections is appointed by the Secretary of State and supervises the Bureau of Elections. MCL 168.32(1), MCL 168.34. The Director of Elections is “vested with the powers and shall perform the duties of the secretary of state under . . . her supervision, with respect to the supervision and administration of the election laws.” *Id.* As “a nonmember secretary of the state board of canvassers,” the Director of Elections supervises the Bureau as it assists the Board in canvassing petitions, like Plaintiff’s petition. *Id.* The Director of Elections also has the specific duty of preparing the 100-word statement of purpose for statewide questions subject to the approval of the Board. MCL 168.32(2), MCL 168.485.

B. Overview of form requirements relevant to petitions to initiate legislation.

The Michigan Constitution provides for the right of initiative, and states in part:

The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative To invoke the initiative . . . petitions signed by a number of registered electors, not less than eight percent for initiative . . . 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. [Const 1963, art 2, § 9 (emphasis added).]

The preparation and circulation of initiative petitions is provided by law. Under MCL 168.482(1) and (2), a petition must be printed on 8 ½ x 14 inch paper, and the “heading” of “INITIATION OF LEGISLATION” must appear on each part of the petition and “shall be . . . printed in capital letters in 14-point boldfaced type.”

The petition must then include a statement by the electors and a warning to the electors regarding the consequences of signing a petition more than once, or signing another individual's name, etc. MCL 168.482(4) and (5). "The remainder of the petition form shall be as provided following the warning . . . in section 544c(1)," and "shall comply with the requirements of section 544c(2)." MCL 168.482(6). Sections 544c(1) and (2) impose additional formatting requirements relating to information required from electors and the certificate of the circulator. MCL 168.544c(1)-(2).³ The Secretary of State has also published instructions for the format of petitions, including initiative petitions.⁴

C. Plaintiff's petition is defective on its face.

As noted above, Plaintiff's petition was approved as to form by the Board of State Canvassers in April 2015. As approved, the petition stated in its heading that "the proposal is to be voted on in the November 8, 2016 General Election." The inclusion of the election date raised no concerns in 2015 because November 8, 2016, was, in fact, the next general election at which a statewide proposal like Plaintiff's could be voted upon. Plaintiff began circulating its petition in 2015 in an effort to place the proposal on the 2016 ballot but failed to gather a sufficient number of signatures. Plaintiff has apparently continued to circulate its petition and collect

³ Under section 544d, petitions to initiate legislation may be circulated on a "countywide form." MCL 168.544d. The countywide form is prescribed by the Secretary of State, "which form shall be substantially as provided in" sections 482 and 544c. *Id.*

⁴ Available online at http://www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf.

signatures for the last three years until it attempted to file the petition with Secretary Johnson on November 5, 2018, the day before the November 6, 2018 General Election. Plaintiff sought to file its petition the day before the 2018 General Election because “[s]ignatures on a . . . petition to initiate legislation collected prior to a November general election at which a governor is elected shall not be filed after the date of that November general election.” MCL 168.473b. See also, OAG, 1975-1976, No. 4880, p 111 (July 3, 1975).⁵ Absent an order by this or another court, Plaintiff’s signatures are now stale under section 473b because they were collected before, but not filed with Secretary Johnson by, the November 6, 2018 General Election.⁶

As Plaintiff points out, neither MCL 168.482 nor MCL 168.544c expressly required Plaintiff to include the date of the election at which its proposal would be voted upon on the face of its petition. But, MCL 168.471 expressly provides that “[i]nitiative petitions under section 9 of article II of the state constitution of 1963 shall be filed with the secretary of state *at least 160 days before the election at which the proposed law is to be voted upon.*” (Emphasis added).⁷ This statute contemplates that a petition sponsor will designate in some manner which general

⁵ This provision is consistent with the fact that the signature requirements for petitions to amend the constitution, to initiate legislation, and for referendums, are all adjusted based on the vote after the November General Election at which the governor is elected. See Const 1963, art 2, § 9, art 12, § 2.

⁶ It is unclear why Plaintiff waited until the last possible moment to attempt to file its petition. In any event, Plaintiff’s “emergency” is self-created in this case.

⁷ Section 471 provides similarly with respect to petitions to amend the constitution.

election the sponsor seeks to have the “proposed law . . . voted upon.” Ordinarily, petition sponsors include this information on the face of the petition, just as Plaintiff did here. For example, all legislative initiative petitions filed or approved as to form in 2018 included the date of election. (Ex. 2).

Presumably, every petition sheet collected by Plaintiff designates the November 8, 2016 General Election as the election at which its proposal would be “voted upon.” That is what the face of the petition states and it is, of course, an impossibility. The passage of time has rendered Plaintiff’s petition defective. Thus, when Plaintiff’s counsel appeared at the Bureau of Elections on November 5, 2018 attempting to file the petition with the Secretary of State, it was rejected because the defect was apparent on the face of the petition. Plaintiff argues that it seeks to have its proposal voted upon at the 2020 General Election, another two years from now. But, Plaintiff bears the burden of demonstrating that mandamus is warranted and Plaintiff points to no constitutional provision, statute, or case law that would permit Defendants to disregard the language upon the face of the petition or permit Defendants to interpret the language differently from what it states.

Plaintiff argues that Secretary Johnson, or Director Williams acting for Secretary Johnson, was not authorized to reject its petition for filing, and instead was required to accept the filing and present it to the Board of State Canvassers. Defendants disagree. As the filing official for petitions to amend the constitution, to initiate legislation, and for referendums, the Secretary of State’s gatekeeping duty is limited. *Citizens Protecting Michigan’s Constitution*, 280 Mich App at 286. But

even this limited duty includes authority to conduct a rudimentary review of a proposed filing to determine if it meets, or at least purports to meet, filing requirements. Here, Bureau of Elections staff reviewed a number of Plaintiff's petition sheets and observed its reference to the November 6, 2016, General Election, and confirmed with Plaintiffs that each sheet contained the same reference to the 2016 General Election. The Director of Elections determined the petition should be rejected because it was not offered for filing "at least 160 days before the election at which the proposed law is to be voted upon." MCL 168.471. Whether a petition is timely filed under section 471 is a decision for the Secretary of State to make as the filing official.

While rejection of a proposed filing is rare, the Director of Elections has done so in the past. For example, in *O'Connell v Director of Elections, et al.*, the former Director of Elections rejected an affidavit of candidacy filed by a judicial candidate that stated the candidate was an incumbent for the office sought when the candidate was not, in fact, the incumbent. 317 Mich App 82, 86-87 (2016).⁸ This defect was apparent from the face of affidavit, and it was rejected by the Director of Elections acting for the Secretary of State as the filing official. Likewise, the timing defect of Plaintiff's petition was apparent from the face of its petition.

Finally, Plaintiff argues that Defendants conceded in the prior case that Plaintiff would be able to submit its petition signatures for filing by the November

⁸ The Secretary of State is the filing official for judicial nominating petitions and judicial affidavits of candidacy. MCL 168.409b.

6, 2018 General Election. To be fair, Defendants brief in the prior case speculated that if Plaintiff could obtain sufficient signatures it could potentially file its petition in time for placement on the 2018 General Election ballot before the signatures became stale under MCL 168.473b. But Plaintiff made no effort to obtain ballot access in 2018. Rather, Plaintiff simply attempted to file its petition before the general election to avoid application of section 473b and to re-engineer litigation regarding MCL 168.472a. Moreover, the effect of the proposed November 8, 2016, election date on Plaintiff's petition was not discussed or litigated in the prior case. Defendants properly rejected Plaintiff's petition, and the Complaint for Mandamus should be denied.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Defendants Secretary of State Ruth Johnson and Director of Elections Sally Williams had no clear legal duty to accept Plaintiff's petition and the Complaint for Mandamus must be denied.

Respectfully submitted,

B. Eric Restuccia (P49550)
Chief Legal Counsel

/s/Heather S. Meingast
Heather S. Meingast (P55439)
Denise C. Barton (P41535)
Assistant Attorneys General
Attorneys for Defendants
P.O. Box 30217
Lansing, Michigan 48909
(517) 373-6434

Dated: November 14, 2018

EXHIBIT 1

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STATE OF MICHIGAN
COURT OF APPEALS

COMMITTEE TO BAN FRACKING IN
MICHIGAN and LUANNE KOZMA,

UNPUBLISHED
March 14, 2017

Plaintiffs-Appellants,

v

No. 334480
Court of Claims
LC No. 16-000122-MM

DIRECTOR OF ELECTIONS, SECRETARY OF
STATE, and BOARD OF STATE
CANVASSERS,

Defendants-Appellees.

Before: CAVANAGH, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendants' motion for summary disposition and dismissing plaintiffs' complaint for injunctive and declaratory relief challenging the constitutionality of MCL 168.472a, which requires signatures on initiative petitions be made within 180 days of their filing. We affirm.

Plaintiff Committee to Ban Fracking in Michigan (CBFM) is engaged in a statutory initiative campaign that seeks to include a ballot option to ban horizontal hydraulic fracturing, which is commonly known as "fracking."¹ Plaintiff Luanne Kozma "directs the campaign." Plaintiffs sought to have the issue on the 2016 ballot and, on April 14, 2015, the Board of State Canvassers approved the form of CBFM's initiative petition. On May 22, 2015, plaintiffs began circulating their petitions and collecting signatures. By November 18, 2015, the 180th day, plaintiffs had collected over 150,000 signatures—but that was less than the required number of 252,523.² By June 1, 2016, the deadline for filing initiative petitions for the November 2016

¹ Article 2, § 9 of the Michigan Constitution provides: "The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative"

² As set forth in Article 2, § 9 of the Michigan Constitution, the required number of registered voter signatures is "not less than eight percent for [an] initiative . . . of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected[.]"

ballot, plaintiffs had over 207,000 signatures—but, again, that was less than the required number.³ Plaintiff is apparently continuing to collect signatures with the same petition sheets in an effort to have the fracking issue on the November 2018 ballot. Accordingly, on June 1, 2016, plaintiffs filed this action challenging the 180-day rule set forth in MCL 168.472a, which provides:

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.

Plaintiffs alleged that MCL 168.472a violates Article 2, § 9 of the Michigan Constitution because it restricts the utilization of the initiative petition by placing an undue burden on their ability to obtain the required number of signatures. Thus, plaintiffs requested the court to declare MCL 168.472a unconstitutional and enjoin defendants from its enforcement.

Defendants responded to plaintiffs' complaint with a motion for summary disposition under MCR 2.116(C)(4), (5), and (8). Defendants argued that plaintiffs did not collect the required number of signatures and did not file their petition with the Secretary of State; thus, no actual controversy existed from which declaratory or injunctive relief could be provided. Moreover, plaintiffs lacked standing and the issue—whether MCL 168.472a was constitutional—was not ripe. Simply stated, the challenged statute had not been applied to plaintiffs, accordingly, plaintiffs' claim was premised on hypothetical facts. In effect, then, plaintiffs were seeking an advisory opinion, which the Court of Claims was not empowered to render. Therefore, defendants requested the dismissal of plaintiffs' complaint.

Plaintiffs responded to defendants' motion for summary disposition, arguing that they met the requirements for declaratory relief under MCR 2.605. Plaintiffs asserted that an actual controversy existed because this action was necessary to guide their future conduct and they could demonstrate a substantial interest distinct from the interest of the public, i.e., "the huge logistical effort of assembling, training, and motivating a volunteer team of hundreds of circulators—which will be detrimentally affected in a manner different from the citizenry at large." Moreover, this matter was ripe for adjudication because, considering the number of signatures already collected, they were likely to obtain the rest before the cut-off date. Accordingly, plaintiffs requested the court to deny defendants' motion for summary disposition.

Subsequently, the Court of Claims issued an opinion and order granting defendants' motion for summary disposition. The court noted that it only had authority to enter a declaratory judgment under MCR 2.605 if an actual controversy existed, which plaintiffs failed to establish in this case. That is, plaintiffs did not submit their initiative petition to the Secretary of State and had not even collected the requisite number of signatures. The court recognized that plaintiffs intended to obtain enough signatures for a ballot initiative, but found "their ability to do so is, at most, speculative." The court determined that "[a] declaratory judgment is not necessary to

³ Pursuant to MCL 168.471, petitions in support of a ballot initiative must be filed at least 160 before the election.

guide plaintiffs' future conduct when, at this point, an application of MCL 168.472a to their efforts would be purely hypothetical." And, for the same reasons, the court concluded, plaintiffs' challenge to the constitutionality of MCL 168.472a was not ripe for judicial consideration. Plaintiffs' claim was contingent on them collecting enough petition signatures and, thus, plainly rests upon a future event that may or may not occur. The ripeness doctrine prevents the adjudication of hypothetical or contingent claims before injury has occurred. Accordingly, plaintiffs' complaint was dismissed. This appeal followed.

Plaintiffs argue that their constitutional challenge to MCL 168.472a presents an actual controversy that is ripe for judicial consideration because a ruling will have a significant effect on their signature collection efforts and it is likely that they will be able to collect the necessary signatures for their ballot initiative. We disagree.

This Court reviews de novo a ruling on a motion for summary disposition. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). Although the Court of Claims did not indicate under which subrule it was granting defendants' motion for summary disposition, we review this matter as granted under MCR 2.116(C)(8).⁴ A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the allegations of the pleadings alone, determining whether it states a claim upon which relief could be granted. *Id.* We also review de novo the lower court's determination whether an actual controversy exists that is ripe for adjudication. *King v Mich State Police Dep't*, 303 Mich App 162, 188; 841 NW2d 914 (2013); *Kircher v City of Ypsilanti*, 269 Mich App 224, 226-227; 712 NW2d 738 (2005).

Plaintiffs' complaint sought a declaratory judgment that MCL 168.472a violates Article 2, § 9 of the Michigan Constitution because it restricts the utilization of the initiative petition by placing an undue burden on their ability to obtain the required number of signatures. Thus, consistent with the purpose of a declaratory judgment action, plaintiffs sought a judicial determination on a question of law. See *Health Central v Comm'r of Ins*, 152 Mich App 336, 347; 393 NW2d 625 (1986). And in *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), our Supreme Court held that "a litigant has standing whenever there is a legal cause of action;" thus, if plaintiffs meet the requirements of MCR 2.605, they have standing to seek a declaratory judgment. *Id.* at 372.

MCR 2.605 governs declaratory judgments and provides, in pertinent part: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A)(1). In this case, the Court of Claims

⁴ This case was not dismissed under MCR 2.116(C)(4) because it was undisputed that the Court of Claims had the right to exercise judicial power over a case of this kind, i.e., had subject-matter jurisdiction. See *Joy v Two-Bit Corp*, 287 Mich 244, 253-254; 283 NW 45 (1938) (citation omitted). Further, this case was not dismissed under MCR 2.116(C)(5) because there was no allegation that plaintiffs lacked the "legal capacity" to sue, which is not the same concept as "standing," i.e., whether the litigant is the proper party to bring the action. See *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010).

held that it could not render a declaratory judgment because an actual controversy ripe for adjudication did not exist, which is a necessary precondition for declaratory relief. See *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 127; 715 NW2d 398 (2006). We agree.

The “actual controversy” requirement prevents a court from deciding hypothetical issues. *Shavers v Kelley*, 402 Mich 554, 589; 267 NW2d 72 (1978). In *Allstate Ins Co v Hayes*, 442 Mich 56; 499 NW2d 743 (1993), our Supreme Court explained:

Properly understood, however, the actual controversy requirement is simply a summary of justiciability as the necessary condition for judicial relief. Thus, if a court would not otherwise have subject matter jurisdiction over the issue before it or, if the issue is not justiciable because it does not involve a genuine, live controversy between interested persons asserting adverse claims, the decision of which can definitively affect existing legal relations, a court may not declare the rights and obligations of the parties before it. [*Id.* at 66 (internal citations omitted).]

Similarly, in *Lansing Sch Ed Ass'n*, 487 Mich at 372 n 20, the Court clarified that the “essential requirement of the term ‘actual controversy’ under the [declaratory judgment] rule is that plaintiffs plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” (internal quotation marks and citations omitted). Stated differently, “before affirmative declaratory relief can be granted, it is essential that a plaintiff, at a minimum, pleads facts entitling him to the judgment he seeks and proves each fact alleged, i.e., a plaintiff must allege and prove an actual *justiciable* controversy.” *Shavers*, 402 Mich at 589. But, “[g]enerally, where the injury sought to be prevented is merely hypothetical, a case of actual controversy does not exist.” *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000).

This case does not “involve a genuine, live controversy between interested persons asserting adverse claims,” *Allstate Inc Co*, 442 Mich at 66, and the injury that plaintiffs seek to prevent is merely hypothetical, *Citizens for Common Sense*, 243 Mich App at 55. Plaintiffs, in effect, are claiming that they are unable to meet the 180-day rule set forth in MCL 168.472a with regard to their ballot initiative; thus, they filed this action seeking the declaration that the 180-day rule is unconstitutional. But this is not a “genuine, live controversy.” This is not a case in which plaintiffs have collected the number of required petition signatures, albeit during a time-frame outside the 180-day rule, filed those petitions at least 160 days before the election, had those petitions rejected by defendants as insufficient, and then had their ballot proposal denied. In fact, defendants had made no adverse claim and had taken no adverse action that impacted plaintiffs’ legal rights in any way before plaintiffs filed this action. That is, no controversy between the parties existed. Rather, plaintiffs are projecting that, in the future, if they ever collect the precise number of petition signatures required for their ballot initiative, they will be rejected by defendants because they do not meet the requirements of the 180-day rule. Thus, plaintiffs’ claim sets forth a possible—not actual—controversy that may arise in the future which rests upon contingent, uncertain events that may not occur at all and the injury plaintiffs seek to prevent is merely conjectural or hypothetical.

Further, plaintiffs' reliance on the case of *Huntington Woods v Detroit*, 279 Mich App 603; 761 NW2d 127 (2008), is misplaced. In that case, the golf course property that the defendant was in the process of selling was located in the plaintiffs' city and residential subdivision, and was subject to certain deed restrictions that impacted the plaintiffs' own property rights. *Id.* at 606-610. Thus, the parties had clear antagonistic legal interests with regard to the real property at issue which existed *before* the lawsuit was filed, i.e., "adverse claims." In this case, the parties did not have antagonistic legal interests before this lawsuit was filed; defendants had taken no action that impacted plaintiffs' legal rights.

In summary, because no actual controversy ripe for declaratory relief exists, the Court of Claims lacked jurisdiction to issue a declaratory judgment and properly dismissed plaintiffs' complaint.

Affirmed. Defendants are entitled to tax costs as the prevailing parties. See MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Deborah A. Servitto

EXHIBIT 2

RECEIVED by MCOA 11/14/2018 4:50:55 PM

INITIATION OF LEGISLATION

A petition to initiate legislation to amend the Clean and Renewable Energy and Energy Waste Reduction Act, 2008 PA 265, as amended by 2016 PA 342, by amending sections 11, 28, 39, and 45 (MCL 460.1011, MCL 460.1028, MCL 460.1039 and MCL 460.1045), and by adding section 212, to increase the renewable energy standard for electric providers to 36% by 2030, with the renewable energy standard increasing incrementally, starting with 18% by 2023, 21% by 2024, 24% by 2026, 27% by 2028 and 30% by 2030; define renewable energy as solar, wind, biomass, hydropower, and municipal solid waste or landfill gas, and not pet coke, hazardous waste, scrap tires, or coal waste; and allow an electric provider to recover the cost of compliance, but the amount an electric provider can charge shall not exceed an average of \$2 per month per residential customer, if not enacted by the Michigan Legislature in accordance with the Michigan Constitution of 1963, the proposal is to be voted on at the November 6, 2018 general election.

FOR THE FULL TEXT OF THE PROPOSED LEGISLATION SEE THE REVERSE SIDE OF THIS PETITION.

We, the undersigned qualified and registered electors, residents in the county of _____, State of Michigan, respectfully 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		
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CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	1.						
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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 Clean Energy, Healthy Michigan, P.O. Box 71740, Madison Heights, MI 48071.



MI000012

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 _____

RECEIVED by MCOA 11/14/2018 4:50:55 PM

INITIATION OF LEGISLATION

An initiation of legislation to enact the Earned Sick Time Act. This initiated law would provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as a result of a child's disability, health, or issues due to domestic violence and sexual assault; specify the conditions for accruing and using earned sick time; prohibit retaliation against an employee for requesting, exercising or enforcing rights granted in this act; prescribe powers and duties of certain state departments, agencies, and officers; provide for promulgation of rules; and provide remedies and sanctions.

If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 6, 2018.

FOR THE FULL TEXT OF THE PROPOSED LEGISLATION SEE THE REVERSE SIDE OF THIS PETITION.

We, the undersigned qualified and registered electors, residents in the county of _____, State of Michigan, respectfully 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		
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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.

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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 Raise Michigan, 80, Box 1502, Royal Oak, MI 48068

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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 _____

RECEIVED by MCOA 11/14/2018 4:50:55 PM

An initiation of legislation to repeal 1965 PA 166, entitled "An act to require prevailing wages and fringe benefits on state projects; to establish the requirements and responsibilities of contracting agents and bidders; and to prescribe penalties" (MCL 408.551 to 408.558); and to provide for an appropriation for related purposes. If not enacted by the Michigan Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation will be voted on at the November 6, 2018 General Election.

For the full text of the proposed legislation, please see 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.

INITIATION OF LEGISLATION

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
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CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	1.						
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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 at least 18 years of age or older, 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 a 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 in which the signature was made, 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 local 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 this 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.

Filed for with regulated funds by Protecting Michigan Taxpayers, P.O. Box 14162, Lansing, MI 48901

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)

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INITIATION OF LEGISLATION

A petition to initiate legislation to enact the Great Lakes Pipeline Safety Regulation Act which would provide for the termination of the Straits of Mackinac Pipe Line Easement granted by the Conservation Commission of the State of Michigan to Lakehead Pipe Line Company, Inc. executed April 23, 1953; require that pipelines subject to this act provide a policy of insurance or bond of at least \$4 billion and a surety bond of at least \$400 million; prohibit the state from granting easements over, through, under, or upon the bottomlands of the Great Lakes for pipelines to transport crude oil or liquid petroleum products; provide for enforcement of the act; and to supersede any acts, parts of acts, agreements, contract, rate, easement, local charter, ordinance or resolution which conflicts with the act. This proposal is to be voted on in the November 6, 2018 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		
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CITY OF _____ TOWNSHIP OF _____	1.						
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CITY OF _____ TOWNSHIP OF _____	9.						
CITY OF _____ TOWNSHIP OF _____	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 such 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.

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

(Signature of Circulator)	(Date)
(Printed Name of Circulator)	
(Complete Mailing Address (Street and Number or Rural Route)) Do not enter a post office box	
(City or Township, State, Zip Code)	

(Number of Circulators in this City or Township who are not a Resident of Michigan)

RECEIVED by MCOA 11/14/2018 4:50:55 PM

An initiative of legislation to allow under state law the personal possession and use of marijuana by persons 21 years of age or older; to provide for the lawful cultivation and sale of marijuana and industrial hemp by persons 21 years of age or older; to permit the taxation of revenue derived from commercial marijuana facilities; to permit the promulgation of administrative rules; and to prescribe certain penalties for violations of this act. If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 6, 2018. For the full text of the proposed legislation, see the reverse side of this petition.

We, the undersigned qualified and registered electors, residents in the county of _____, State of Michigan, respectfully 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 _____ TOWNSHIP OF _____	1.						
CITY OF _____ TOWNSHIP OF _____	2.						
CITY OF _____ TOWNSHIP OF _____	3.						
CITY OF _____ TOWNSHIP OF _____	4.						
CITY OF _____ TOWNSHIP OF _____	5.						
CITY OF _____ TOWNSHIP OF _____	6.						
CITY OF _____ TOWNSHIP OF _____	7.						
CITY OF _____ TOWNSHIP OF _____	8.						

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 any person to sign this 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 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 clerk. By making a 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 the 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 Coalition to Regulate Marijuana Like Alcohol, 1100 Champlain St., NWE Suite #12, Washington, DC 20009

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

RECEIVED by MCOA 11/14/2018 4:50:55 PM

INITIATION OF LEGISLATION

A petition to initiate legislation to increase the minimum wage to \$10 per hour on January 1, 2019; to \$10.65 per hour on January 1, 2020; to \$11.35 per hour on January 1, 2021 and \$12 per hour on January 1, 2022; to annually adjust the minimum wage based on the change in the cost of living; to require that gratuities are to be retained by the employee who receives them except as voluntarily shared; and to gradually increase the minimum wage in steps for employees who receive tips or gratuities until it is the same as the minimum wage for other employees. The proposal if adopted would supersede 2014 Public Act 138. If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposal is to be voted on at the November 6, 2018 general election. FOR THE FULL TEXT OF THE PROPOSED LEGISLATION, SEE 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, 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 CIRCULATION

The undersigned circulator of the above petition asserts that he or she is 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 circulator of the petition was at the time of signing a registered elector of the city or township indicated preceding the signature of the person who was questioned for signing the petition.

☐ If the circulator is not a resident of Michigan, the circulator shall make a cross (x) 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. 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 consents 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 Michigan One Fair Wage, P.O. Box 35174, Detroit, MI 48235.

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 _____

RECEIVED by MCOA 11/14/2018 4:50:55 PM

INITIATION OF LEGISLATION

An initiation of legislation to enact the Earned Sick Time Act. This initiated law would provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as a result of a child's disability, health, or issues due to domestic violence and sexual assault; specify the conditions for accruing and using earned sick time; prohibit retaliation against an employee for requesting, exercising or enforcing rights granted in this act; prescribe powers and duties of certain state departments, agencies, and officers; provide for promulgation of rules; and provide remedies and sanctions.

If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 6, 2018.

FOR THE FULL TEXT OF THE PROPOSED LEGISLATION SEE 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

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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 Raise Michigan, RO, Box 1502, Royal Oak, MI 48068

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11/14/2018

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 _____

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