

Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Court of Claims Opinion – 7/24/19

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STATE OF MICHIGAN
COURT OF CLAIMS

COMMITTEE TO BAN FRACKING IN
MICHIGAN, and LUANNE KOZMA,

Plaintiffs,

**OPINION REGARDING DEFENDANTS’
MARCH 7, 2019 MOTION FOR
SUMMARY DISPOSITION AND
DEFENDANTS’ MARCH 26, 2019
MOTION TO STAY DISCOVERY**

v

Case No. 18-000274-MM

SECRETARY OF STATE JOCELYN BENSON¹,
and DIRECTOR OF ELECTIONS SALLY
WILLIAMS, in their official capacity, and
BOARD OF STATE CANVASSERS,

Hon. Christopher M. Murray

Defendants.

Pending before the Court is defendants’ March 7, 2019 motion for summary disposition filed pursuant to MCR 2.116(C)(10). Also pending before the Court is defendants’ motion to stay discovery. For the reasons that follow the motion for summary disposition will be GRANTED. As a result, the motion to stay discovery will be DENIED as moot.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The procedural history of this case, as well as a related, separate matter previously filed in this Court, is lengthy and well-known to the parties. As a result, this opinion will recite only a few, basic facts, given the parties’ and this Court’s familiarity with these cases.

¹ Pursuant to MCR 2.202(C), because of her election as Secretary of State in November, 2018, Jocelyn Benson replaces Ruth Johnson as the proper defendant.

A. PLAINTIFFS' INITIATIVE PETITION CAMPAIGN

According to the allegations in plaintiffs' complaint, plaintiff Committee to Ban Fracking in Michigan (CBFM) is a committee engaged in a legislative initiative campaign, see Const 1963, art 2, § 9, that seeks to put before the electorate a ballot proposal to ban the practice of horizontal hydraulic fracturing ("fracking") in this state. On or about April 14, 2015, CBFM submitted a pre-circulation copy of its initiative petition to defendant Board of State Canvassers, which approved the form of the petition. As will be discussed in more detail below, the petition stated that the proposal would be presented to the electorate at the "November 8, 2016 General Election." CBFM began collecting signatures in an effort to obtain the requisite number—252,523—as set by art 2, § 9's requirement that an initiative petition contain "not less than eight percent . . . of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected" For purposes of ascertaining the required number of signatures, the "last preceding election at which a governor was elected" at that time was the November 2014 general election.

B. FIRST ROUND OF LITIGATION

As of June 1, 2016, the deadline for submitting the initiative petitions for the November 2016 ballot, see MCL 168.471, CBFM was short of the necessary signatures. Recognizing that they would be unable to place the measure on the ballot in 2016, plaintiffs continued gathering signatures, this time with the goal of placing the measure on the ballot in November 2018. One of the potential problems for CBFM in proceeding in this manner, however, was the prohibition in MCL 168.472a of counting signatures that are more than 180 days old.

Purportedly out of a desire to avoid any potential issues with MCL 168.472a, plaintiffs filed a complaint in this Court in which they challenged the constitutionality of the 180-day rule.

Plaintiffs alleged that MCL 168.472a violates art 2, § 9 because it infringes on the self-executing provisions of art 2, § 9.

In an August 8, 2016 opinion and order, this Court held that plaintiffs' constitutional challenge was not ripe for consideration because their ability to obtain the requisite amount of signatures—even with the “old” signatures—was, at most, speculative. *Committee to Ban Fracking in Michigan v Dir of Elections*, Opinion and Order of the Court of Claims, issued August 8, 2016 (Docket No. 16-000122-MM), p. 4. Because plaintiffs had not submitted their petition or collected the required number of signatures, they failed “to establish more than a hypothetical violation of their constitutional rights under Const 1963, art 2, § 9” and their claim was not ripe for adjudication. *Id.*

The Court of Appeals affirmed this Court's decision. *Committee to Bank Fracking in Michigan v Dir of Elections*, unpublished opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 334480). The Court agreed there was no live controversy because the former case was not one “in which plaintiffs have collected the number of required petition signatures, albeit during a time-frame outside the 180-day rule,” or even one in which plaintiffs “filed those petitions at least 160 days before the election” and had the same rejected as insufficient. *Id.* at p. 4.

C. CONTINUED EFFORTS AND PETITION REJECTED FOR FILING

In 2017 and 2018, CBFM continued circulating its petition and collecting signatures after the dismissal of the first lawsuit. Believing it had enough signatures to satisfy the 8% threshold set by the 2014 gubernatorial election, plaintiff LuAnne Kozma arrived at the office of the Bureau of Elections at approximately 4:36 p.m. on November 5, 2018, and tendered CBFM's petition and signatures for filing. The next day, i.e., November 6, was the date of the 2018

general election, and it was scheduled to be an election at which a governor was elected. Hence, the November 6, 2018 election would establish new signature requirements for initiative petitions going forward. See art 2, § 9. According to plaintiffs, filing the day before the election was “critical” for CBFM because the number of voters who cast ballots in the gubernatorial race “was projected to increase and did substantially increase” on November 6, 2018. Hence, CBFM attempted the last-minute filing in order to have the petition measured against 2014’s lesser signature requirements.

The filing did not occur as anticipated by CBFM, however, because of a purported defect on the face of the petition and signature sheets. The first paragraph of the petition, which describes the legislation intended to be enacted by the petition, states that the “proposal is to be voted on *in the November 8, 2016 General Election*.” (Emphasis added). Every single signature page contained the same language. In ¶ 27 of an affidavit filed in this matter, plaintiff Kozma averred that she told a receptionist at the office that, despite the articulated date on the petition and signature pages, CBFM’s “new target election” was the November 2020 general election. Nevertheless, the petition was rejected. Defendant Sally Williams, the Director of Elections,² rejected the petition because it incorrectly stated the same was to be voted on at an election that occurred nearly two years prior to the date the petition was tendered for filing, i.e., the November 8, 2016 general election.

D. SECOND ROUND OF LITIGATION—COMPLAINT FOR MANDAMUS RELIEF

² Pursuant to MCL 168.32(1) the Director of Elections is appointed by the Secretary of State and is “vested with the powers and shall perform the duties of the secretary of state under his or her supervision, with respect to the supervision and administration of the election laws.”

On November 6, 2018, plaintiffs filed an original action in the Court of Appeals pursuant to MCL 600.4401(1) and sought mandamus relief. Plaintiffs asked the Court of Appeals to compel the Director of Elections and the Secretary of State to accept the November 5, 2018 attempted filing and to forward the same to defendant Board of State Canvassers. See MCL 168.475(1) (“Upon the filing of a petition under this chapter, the secretary of state shall immediately notify the board of state canvassers of the filing of the petition.”). Plaintiffs contended that the Director of Elections and/or the Secretary of State had no authority to refuse to accept the petition or to usurp the Board of State Canvasser’s authority to make determinations regarding the sufficiency of initiative petitions. In a proposed amended complaint filed after the November 6, 2018 election passed, plaintiffs asked the Court of Appeals to declare that the November 5, 2018 action constituted a “filing” that should have required the Secretary of State and/or the Director of Elections to take possession of the petition and signatures and to immediately forward them to the Board of Canvassers.

In a one-page order, the Court of Appeals denied the complaint for mandamus relief as well as the motion to amend the complaint. *Committee to Ban Fracking in Michigan v Dir of Elections*, unpublished order of the Court of Appeals, entered November 15, 2018 (Docket No. 346280).

E. THE INSTANT COMPLAINT

On or about December 27, 2018, plaintiffs filed the instant complaint. Count I of the complaint alleges that MCL 168.472b, which prohibits the counting of petition signatures

gathered more than 180 days before the petition is filed, is unconstitutional.³ Count II—which is labeled “Equitable Estoppel”—alleges that defendants “expressly affirmed during the proceedings of the parties’ initial 2016-17 civil case that plaintiffs would be able to file their petition if and when they collect the remaining number of petition signatures needed to satisfy the constitutional threshold.” Plaintiffs assert that “equity demands” defendants be estopped from relying on the incorrect date on the face of the petitions because defendants reassured plaintiffs they could file their petition after obtaining the requisite number of signatures. Count III of the petition alleges that the Director of Elections and the Secretary of State capriciously refused to accept the petition and in doing so infringed on plaintiffs’ rights under art 2, § 9. Count IV—also asserted against the two defendants referenced in Count III—alleges a violation of this state’s election laws. In essence, plaintiffs contend that there was no statutory authority for defendants to refuse to accept the initiative petition tendered on November 5, 2018. Finally, Count V asserts an equal protection violation. Plaintiffs allege defendants have consistently accepted petitions in spite of the presence of facial defects, and have never before refused to accept petitions tendered for filing.

In their request for relief, plaintiffs ask the Court to declare that their petition was filed on November 5, 2018, i.e., the date it was originally tendered, and to require the Director of Elections and the Secretary of State to provide notice of the filing to the Board of Canvassers pursuant to MCL 168.475(1). Furthermore, plaintiffs ask the Court to declare that the election-date reference on the face of the petitions was extraneous and that the same does not preclude

³ This is in essence the same challenge asserted in the first round of litigation; the difference between the first time plaintiffs asserted the claim and the instant case is that now, at least insofar as it concerned the signature requirements set by the 2014 gubernatorial election, plaintiffs facially met the threshold signature requirement.

CBFM from satisfying the statutory conditions for filing an initiative petition. Finally, plaintiffs ask the Court to declare that MCL 168.472a is unconstitutional as applied to initiative petitions and to enjoin defendants from applying it to discount signatures gathered more than 180 days prior to the date of a petition's filing.

F. DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Defendants now move this Court for summary disposition pursuant to MCR 2.116(C)(10). They first argue that the November 8, 2016 date on the face of the petition was a facial defect that enabled the Director of Elections to refuse to accept the petition. In making this argument, defendants acknowledge that there is no statutory authority in MCL 168.482 or MCL 168.544c—which describe the form of petitions—expressly requiring a petition to bear the date of the election at which the petition will be submitted to the electorate. Nevertheless, defendants argue that MCL 168.471 provided the authority for the Director of Elections to reject the petition, as MCL 168.471 directs that initiative petitions should be filed at least 160 days before the election at which the proposed law is to be submitted to the voters. By setting an outermost filing date, defendants argue that § 471 contemplates that the election at which a petition circulator intends the petition to be voted on by the electorate be specified. And here, every petition sheet submitted by CBFM expressly stated that the pertinent election was the November 8, 2016 general election. The completion of that general election rendered the petition defective, argue defendants, for the reason that it was impossible for the petition to be put to the electorate at the since-completed election. Defendants acknowledge that the Secretary of State and the Director of Elections had only limited gatekeeping authority with respect to initiative petitions. Nevertheless, they argue that this limited authority permitted them to reject a petition bearing a facial defect such as the one CBFM submitted for filing.

Next, defendants argue that irrespective of the operation of the 180-day rule set forth in MCL 168.472a, the signatures contained on plaintiffs' petitions are stale and they cannot be accepted for filing. In making this argument, defendants point out that under MCL 168.473b signatures on a petition collected prior to a November general election at which a governor is elected cannot be filed after the date of that November general election. Here, plaintiffs collected their signatures prior to the November 2018 general election; hence, according to defendants, they cannot file their petition now. Defendants also ask that the Court not sanction plaintiffs' attempt to evade § 473b by way of the last-minute attempt to file on November 5, 2018. According to defendants, signatures collected under the signature requirements set by the November 2014 general election cannot be used for an initiative petition after the next gubernatorial election, which establishes a new set of requirements for petition signatures.

Defendants next argue that there is no merit to plaintiffs' equitable estoppel claim. Initially, defendants argue that plaintiffs have not even pled the existence of a representation from any of the named defendants, but instead cling to statements made in briefs filed by defendants' counsel in the prior round of litigation. Moreover, defendants argue any assertions in their briefing never amounted to representations that plaintiffs would be permitted to file their petition anytime in November 2018; the referenced statements only explained why plaintiffs were unable at that time—a time when they lacked the requisite number of signatures—to challenge the validity of the 180-day rule set forth in § 472a. And at most, defendants contend that the “representation,” to the extent it can even be considered a representation, was that plaintiffs, should they meet the signature requirement, could have filed their petition by the deadline for the November 2018 general election, not for the 2020 election.

Lastly, defendants argue that there is no merit to plaintiffs' constitutional claims. As it concerns the alleged constitutional infirmity of § 472a, defendants argue that the matter is once again moot, for the reason that the purported facial defect contained in the petition prevents this Court from reaching the issue. Further, they contend there is no merit to the alleged constitutional violation relating to the rejection of the petition, for the reason that the petition was invalid. Finally, defendants argue that the equal protection claim is defeated by the existence of the facial defect on the petition, which provided an appropriate reason for rejecting the same.⁴

II. ANALYSIS

A. SUMMARY DISPOSITION REVIEW

Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. "When entertaining a summary disposition motion under Subrule (C)(10), the court must view the evidence in the light most favorable to the nonmoving party, draw all reasonable inferences in favor of the nonmoving party, and refrain from making credibility determinations or weighing the evidence." *Dillard v Schlusser*, 308 Mich App 429, 445; 865 NW2d 648 (2014).

B. THE INITIATIVE PROCESS AND THE REJECTION OF PLAINTIFFS' PETITION

The power of the initiative process is reserved to the people in art 2, § 9 of this state's Constitution. In order to invoke the initiative process, "petitions signed by a number of

⁴The predecessor judge *sua sponte* ordered the parties to brief the issue of whether the doctrine of res judicata bars the instant action. In response, defendants contended it was unclear whether the prior mandamus action was decided on the merits, and they asked the Court not to dismiss on the basis of res judicata. In response, plaintiffs agreed that res judicata should not bar this matter. Here, defendants have made clear that they are not asserting the doctrine and that they do not intend to carry the burden of proving its applicability. *Everson v Williams*, __ Mich App __, __; __ NW2d __ (2019) (Docket No. 340521), slip op at 6.

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.” Art 2, § 9. Any law proposed by the initiative process “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.” *Id.* If the law is not enacted by the Legislature within 40 days, then it shall be submitted to the people at the next general election. *Id.* The Legislature is charged with implementing the provisions of art 2, § 9. *Id.*

In MCL 168.471 *et seq.*, the Legislature has, in accordance with its constitutional directive, implemented the provisions of art 2, § 9. In accordance with this directive, the Legislature has set forth detailed requirements regarding paper size, font size, written summaries of the proposal, and other matters concerning the form of the petition. See MCL 168.482. The Legislature has also articulated certain filing requirements for petitions. Most notably, MCL 168.471⁵ provides that “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.”

With one exception noted in the paragraph below, the Secretary of State’s role with respect to initiative petitions is limited. In general, the Secretary of State’s role is limited to receiving filings and conveying information—either to the Board of Canvassers or to the general public. See, e.g., MCL 168.475(1)-(2); *Citizens Protecting Michigan’s Const v Secretary of*

⁵ As is the case with some of the other pertinent statutes cited herein, MCL 168.471 was amended, effective December 28, 2018, after the commencement of this action. See 2018 PA 608. Unless otherwise noted herein, all references in this opinion are to the pre-amendment version of § 471.

State, 280 Mich App 273, 286; 761 NW2d 210 (2008) (“The Secretary’s duties in regard to an initiative petition are [] limited.”). For instance, MCL 168.475(1) directs that, upon the filing of a petition, “the secretary of state shall immediately notify the board of state canvassers of the filing of the petition.” “The Secretary has no further duties until after the Board deems a petition sufficient and approves the Director of Elections’ statement of purpose.” *Citizens Protecting Michigan’s Const*, 280 Mich App at 286. The Secretary of State is not permitted to make any determinations about the validity of the proposal contained within a petition. *Id.* And upon the Board of Canvassers declaring that the petition is sufficient, the Secretary of State is charged with giving notice to the public about the petition. MCL 168.477(1); MCL 168.478.

Here, plaintiffs argue that the Secretary of State—as well as the Director of Elections, which is “vested with the powers and shall perform the duties of the secretary of state” with respect to election law, see MCL 168.32(1)—had no authority to reject CBFM’s petition, due to the erroneous reference to the November 8, 2016 election or otherwise. Defendants, meanwhile, argue that § 471, which sets forth the 160-day rule, provides such authority. The Court agrees with defendants’ position.

In this respect, § 471 specifies that in order to be valid, an initiative petition “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.” The statute does not expressly mandate which entity—the Secretary of State, the Board of Canvassers, or some other entity—is to enforce the 160-day rule. The Court agrees with defendants, however, that the most logical enforcer of this provision, as can be ascertained from the entirety of the pertinent statutory scheme, is the Secretary of State. The Secretary of State is, by analogy, a ticket-taker charged with immediately forwarding petitions, upon filing, to the Board of Canvassers. Extending that analogy, the 160-day rule in § 471 is simply a date after

which no tickets may be accepted and after which admittance may be denied. Indeed, the statutory scheme simultaneously mandates that all petitions “shall” be filed with the Secretary of State, see MCL 168.471; MCL 168.472, MCL 168.475; however, that filing must occur at least 160 days before the election at which the proposed law is to be voted on by the electorate, see § 471. Given that the filing of a petition is to occur with the Secretary of State and that the Secretary of State is the only entity with any role with respect to the “filing” of a petition, it follows that any violations of the 160-day rule for filing are also within the Secretary of State’s statutory authority. This notion is further reinforced by the Secretary of State’s obligation to immediately forward a “filed” petition to the Board of Canvassers. To this end, it would make little sense for the Secretary of State to “immediately” forward a late-filed petition to the Board of Canvassers for the latter to begin canvassing the late-filed (and invalid) petition to ascertain whether the petition was “signed by the requisite number of qualified and registered electors.” See MCL 168.476(1).

The contextual whole of the statutory scheme imposes upon the Secretary of State an obligation to ensure that the 160-day filing requirement in § 471 has been satisfied. See *McCahan v Brennan*, 492 Mich 730, 738-739; 822 NW2d 747 (2012) (addressing statutory interpretation and the need to construe statutes as a contextual whole). For the avoidance of doubt, this opinion should not be understood as granting the Secretary of State any authority to weigh in on the merits or contents of a petition, or to reject a petition as a result of the same.

Rather, and consistent with the pertinent statutory scheme, the Secretary of State's role in this respect is only to ascertain whether the 160-day filing requirement has been met.⁶

Turning to the merits, the face of CBFM's petition was plainly in violation of § 471's 160-day requirement. As noted, each and every signature page submitted unequivocally stated that the proposal in CBFM's petition was to "be voted on in the November 8, 2016 General Election." This was an election that had long since passed when plaintiff Kozma submitted the petition to the Secretary of State. For this reason, the Secretary of State was authorized, consistent with the narrow scope of authority afforded to that office under the statutory scheme, to reject the filing of the initiative petition. This conclusion is unchanged by plaintiff Kozma's averments indicating that, in spite of the text of the petition, CBFM really intended the matter to be put to a vote in the November 2020 election. Again, the role of the Secretary of State with respect to the filing of petitions is limited. That role should not be expanded to require a searching inquiry into that which is beyond the information listed on the face of the petition itself. Stated otherwise, if the petition and signature pages submitted are plainly in violation of § 471's requirements, the Secretary of State is permitted, if not required, to reject the same. And here, those pages and all objective indicia present in CBFM's petition unequivocally showed that the petition violated the 160-day rule. When presented with that objective indicia⁷ defendants were authorized under the statutory scheme to reject the filing on the basis of that objective

⁶ Although not dispositive, defendants note that there have been other instances where the Secretary of State—or the Director of Elections acting in the Secretary's stead—have rejected election petitions. See, e.g., *O'Connell v Dir of Elections*, 317 Mich App 82, 87; 894 NW2d 113 (2016).

⁷ Contrary to plaintiffs' assertions, it matters little whether this reference need not have been included on the petitions. It was included, and it was erroneous. As such, the erroneous election date gave rise to the Secretary of State's limited authority to reject the petition.

information. Drawing on the Court's previous analogy, the ticket presented by CBFM simply did not permit admittance.

The Court acknowledges that the rejection of plaintiffs' petition resulted in plaintiffs missing the deadline for using signatures gathered prior to the November 2018 election. Further, the Court is mindful that any new petitions filed by plaintiffs will be subject to heightened signature requirements established by the November 2018 election. However, the Court cannot be swayed by those consequences, given that it was within the Secretary of State's legal purview to reject the filing of a petition that was plainly, on its face, in violation of § 471. As a result, defendants are entitled to summary disposition on Count IV of the complaint, which alleges a violation of this state's election laws by way of the Secretary of State and Director of Election's refusal to accept CBFM's petition for filing.⁸

The Court also concludes summary disposition is warranted on Count III of the complaint, which is plaintiffs' assertion that any rejection of the petition as occasioned by § 471 violates art 2, § 9. Plaintiffs' complaint alleges that defendants acted capriciously by refusing to

⁸ Plaintiffs' citation to an attorney general opinion in support of its position, OAG, 1979 No. 5528 (August 3, 1979), is unconvincing. Attorney General opinions are not binding on courts, and it is open to debate as to whether they can even bind executive branch agencies. See *Danse Corp v Madison Hts*, 466 Mich 175, 182 n. 6; 644 NW2d 721 (2002). In any event, that opinion concerned the ability of a petition's circulator to postpone the election at which a petition could be presented to the electorate. It did not concern whether a petition could be rejected for violation of the 160-day rule. The Court also finds unconvincing caselaw cited by defendants that pertains to a petition filed after an intervening election and which concerned the interpretation of the 1908 Constitution. See *Hamilton v Deland*, 221 Mich 541; 191 NW 829 (1923). Here, the petition was never accepted for filing and thus was never "filed." Furthermore, the Court questions, but need not expressly decide, whether the holding in *Hamilton* has any precedential value with respect to the interpretation of the current iteration of art 2, § 9, particularly in light of the Court of Appeals' decision in *Bingo Coalition for Charity—Not Politics v Bd of State Canvassers*, 215 Mich App 405; 546 NW2d 637 (1996), which interpreted the current iteration of art 2, § 9.

accept what plaintiffs believed was a timely filed petition. However, plaintiffs' complaint fails to both acknowledge the statutory authority permitting the rejection of the petition, and to assert that the statutory authority was unconstitutional. In any event, plaintiffs' arguments that § 471 is unconstitutional are not convincing, as the 160-day rule applied to the filing of the petition under § 471 is not an "undue burden" placed on the initiative process. Cf. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466-467; 185 NW2d 392 (1971). In arguing to the contrary, plaintiffs tacitly concede that § 471 is constitutional as a legislative implementation of art 2, § 9 insofar as it is a facilitative measure for ensuring sufficient pre-election time for a proposal to reach the Legislature and/or electorate. See art 2, § 9 ("The legislature shall implement the provisions of this section."). That is the only method, contrary to plaintiffs' assertions, in which § 471 has been applied in this case. The petition submitted by CBFM was, on the face of the ambiguous language contained on every signature page, untimely. The rejection of the petition was nothing more than an exercise of this pre-election timeframe. As a result, summary disposition will issue in defendants' favor on Count III of the complaint.

C. PLAINTIFFS' "EQUITABLE ESTOPPEL" CLAIM

Plaintiffs assert in Count II that defendants should be equitably estopped from rejecting the petitions, by virtue of a statement or statements made by defendants' counsel in various briefs filed in the previous round of litigation. Plaintiffs assert that these statements induced them to believe they would be able, upon obtaining the requisite number of signatures, to file their petition in November, 2018.

"Equitable estoppel arises where a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party will be prejudiced if the first party is allowed to

deny the existence of those facts.” *NL Ventures VI Farmington, LLC v City of Livonia*, 314 Mich App 222, 240; 886 NW2d 772 (2015) (citation and quotation marks omitted). There are a number of reasons why plaintiffs’ contentions are without merit and why summary disposition is warranted on this claim.

As an initial matter, equitable estoppel is not an independent cause of action, contrary to the manner in which plaintiffs have pled it. See *Casey v Auto Owners Ins Co*, 273 Mich App 388, 399; 729 NW2d 277 (2006) (“It is well established under Michigan law that equitable estoppel is not a cause of action unto itself; it is available only as a defense.”). Furthermore, equitable estoppel applies to factual representations, see *NL Ventures*, 314 Mich App at 240, and plaintiffs are trying to extend the doctrine to assertions about the law, as made in arguments presented in briefs filed in the 2016 action. Moreover, even assuming any representations were made or could have been made in the briefs, the representations did not amount to assertions that plaintiffs could file their signatures at any time, nor do they suggest plaintiffs could succeed in placing the petition on the ballot at any election of plaintiffs’ choosing without regard to the applicable law. None of the statements suggests plaintiffs could file a petition on the eve of the November 2018 election in the hopes of having the same voted on at a future election, or that defendants would overlook any statutory violations. At most, the asserted statements indicate that if plaintiffs achieved the requisite number of signatures, they could attempt to file the petition for purposes of having the petition voted on at then-upcoming (2018) election and that issues concerning the constitutionality of the 180-day rule articulated in MCL 168.472a (regarding stale signatures) could be litigated at that time. As a result, summary disposition under MCR 2.116(C)(10) is warranted on the equitable estoppel claim.

D. THE EQUAL PROTECTION CLAIM

At the outset, it is unclear whether plaintiffs are still pursuing their equal protection claim, for the reason that they have not specifically addressed defendants' argument as to why summary disposition should issue on this count (Count V). In any event, the Court agrees with defendants that summary disposition is warranted. "The equal protection clauses of the Michigan and United States constitutions provide that no person shall be denied the equal protection of the law." *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 318; 783 NW2d 695 (2010).

The Equal Protection Clause requires that all persons similarly situated be treated alike under the law. When reviewing the validity of state legislation or other official action that is challenged as denying equal protection, the threshold inquiry is whether plaintiff was treated differently from a similarly situated entity. The general rule is that legislation that treats similarly situated groups disparately is presumed valid and will be sustained if it passes the rational basis standard of review: that is, the classification drawn by the legislation is rationally related to a legitimate state interest. Under this deferential standard, "the burden of showing a statute to be unconstitutional is on the challenging party, *not* on the party defending the statute[.] [*Id.* at 318-319 (citations and quotation marks omitted).]

The documentary evidence presented does not reveal that CBFM's petition was treated differently from petitions filed by any similarly situated entities. "To be considered similarly situated, the challenger and his comparators must be *prima facie* identical in all relevant respects or directly comparable . . . in all material respects." *Lima Twp v Bateson*, 302 Mich App 483, 503; 838 NW2d 898 (2013) (citation and quotation marks omitted). Plaintiffs contend, and cite instances of when, other petitions have been accepted for filing despite the presence of defects on the face of the petitions. However, it is apparent that none of the other petitions contained the 160-day defect present in this case. See *Morgan v Bd of State Canvassers*, unpublished order of the Court of Appeals, entered June 8, 2018 (Docket No. 344108); *Delaney v Bd of State Canvassers*, unpublished per curiam opinion of the Court of Appeals, issued June 16, 2016 (Docket No. 333410); *The Tea Party v Bd of State Canvassers*, unpublished order of the Court of

Appeals, entered August 30, 2010 (Docket No. 299805). Here, by contrast, the defect in the petition concerned the 160-day rule, which is a matter the Secretary of State is charged with enforcing and is the limited type of error that enabled the Secretary of State to reject a petition. An attempt to draw a comparison between petitions that were accepted for filing but which contained defects *outside* of the Secretary of State's authority to review does not establish that plaintiffs and those other entities are prima facie identical in every respect. See *Lima Twp*, 302 Mich App at 503. Accordingly, summary disposition is warranted on Count V of the complaint.

E. REMAINING ISSUES

Because the petition was never "filed" the Court need not address the effect, or lack thereof, of MCL 168.473b. That statute provides "[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." Here, the petition was simply not "filed" before the November 2018 election, so there is no reason for the Court to address whether this statutory scheme would warrant summary disposition in defendants' favor. As a result, any discussion regarding plaintiffs' attempt to, at the last hour, avoid what was anticipated to be increased signature requirements for a 2020 ballot proposal by utilizing signature requirements established six years prior would be purely academic and need not be addressed in this opinion. See *TM v MZ*, 501 Mich 312, 317; 916 NW2d 473 (2018) (describing a moot case or moot issue as one presenting "nothing but abstract questions of law which do not rest upon existing facts or rights") (citation and quotation marks omitted).

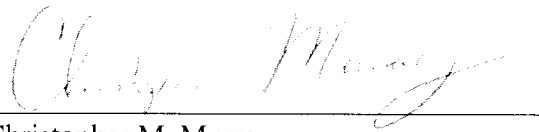
Furthermore, Count I of plaintiffs' complaint, which again asks the Court to declare that the 180-day rule established in MCL 168.472a runs afoul of art 2, § 9, is moot. Indeed, there are no signatures which have been discounted by virtue of the statute, such that any argument

premised on § 472a is moot for the reason that the same does not rest upon existing facts or rights. See *TM*, 501 Mich at 317.

III. CONCLUSION

For the foregoing reasons, defendants' motion for summary disposition will be GRANTED pursuant to MCR 2.116(C)(10). The motion pertaining to discovery will be DENIED as moot.

DATE: July 24, 2019



Christopher M. Murray
Judge, Court of Claims

Appellants' Opening Brief
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Court of Claims Order – 7/24/19

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STATE OF MICHIGAN
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COMMITTEE TO BAN FRACKING IN
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SECRETARY OF STATE, JOCELYN BENSON¹, Hon. Christopher M. Murray
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ORDER REGARDING DEFENDANTS' MARCH 7, 2019
MOTION FOR SUMMARY DISPOSITION AND
MARCH 26, 2019 MOTION TO STAY DISCOVERY

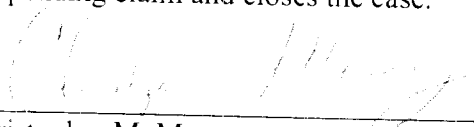
The Court, having issued an opinion regarding defendants' March 7, 2019 motion for summary disposition and, defendants' March 26, 2019 motion to stay discovery, and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED that, for the reasons set forth in the accompanying opinion, defendants' March 7, 2019 motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(10).

IT IS HEREBY FURTHER ORDERED that defendants' March 26, 2019 motion to stay discovery is DENIED as moot, in light of the Court's summary disposition order.

This is a final order that resolves the last pending claim and closes the case.

Date: July 24, 2019



Christopher M. Murray

¹ Pursuant to MCR 2.702(C), because of her election as Secretary of State in November, 2018, Jocelyn Benson replaces Ruth Johnson as the proper defendant.

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Judge, Court of Claims

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Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Attachment A

CBFM Blank Petition
Sheet – Front and Back

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INITIATION OF LEGISLATION

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

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

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

| INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE | SIGNATURE | PRINTED NAME | STREET ADDRESS OR RURAL ROUTE | ZIP CODE | DATE OF SIGNING | | |
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| 10. CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/> | | | | | | | |

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; 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.

(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. (I) 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.

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MI DEPT OF STATE
BUREAU OF ELECTIONS

Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Attachment B

Nessel, Whitmer Signatures

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INITIATION OF LEGISLATION

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

We, the undersigned qualified and registered electors, residents in the county of Ingham, 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 <input type="checkbox"/> | TOWNSHIP OF <input type="checkbox"/> | <u>[Signature]</u> | <u>Graham Whitman</u> | <u>1456 Meadowcreek</u> | <u>48823</u> | <u>04</u> | <u>22</u> | <u>18</u> |
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CERTIFICATE OF CIRCULATOR

I, the undersigned circulator of the above petition, certify 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.

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

Carole-Jo Chi
(Signature of Circulator)

Carole-Jo Chi
(Printed Name of Circulator)

35325 Moravian Dr.
(Complete Residence Address (Street and Number or Rural Route)) Do not enter a post office box

Stetling Heights, MI 48312
(City or Township, State/Zip Code)

4 23 18
(Date)

Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Attachment C

Canvasser Minutes
August 17, 2017
July 26-27, 2018

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

Meeting
of the
Board of State Canvassers

August 17, 2017
Lansing Center, 333 East Michigan Avenue
Lansing, Michigan

Called to order: 10:06 a.m.

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

Members absent: None.

Agenda item: Consideration of meeting minutes for approval.

Board action on agenda item: The Board approved the minutes of the June 21, 2017 meeting as submitted. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Recording of the results of the August 8, 2017 special primary for the office of State Representative, 1st District.

Board action on agenda item: The Board recorded the results of the August 8, 2017 special primary for the office of State Representative, 1st District as certified by the Wayne County Board of Canvassers on August 16, 2017. Moved by Bradshaw; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Canvass and certification of the August 8, 2017 special primary for the office of State Representative, 109th District.

Board action on agenda item: Based on an examination of the returns received by the Secretary of State for the August 8, 2017 special primary, the Board certified that the attached report is a true statement of votes cast for the office of State Representative, 109th District. The Board further

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certified that the persons named in the attached List of Nominees are duly nominated for the office of State Representative, 109th District, and are qualified to appear as candidates for that office on the November 7, 2017 special election ballot. The Board also authorized staff of the Bureau of Elections to represent the Board in any recount of votes cast at the August 8, 2017 special primary. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried. Time of certification: 10:09 a.m.

Agenda item: Consideration of the form of an initiative petition submitted for approval by MI Time to Care, P.O. Box 1502, Royal Oak, Michigan 48068. (This proposal would enact the Earned Sick Time Act, requiring employers to provide sick leave for personal and family health needs subject to certain conditions.)

Board action on agenda item: The Board approved the form of the initiative petition sponsored by MI Time to Care 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 Pero; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of the form of an initiative petition to amend the State Constitution submitted for approval by Abrogate Prohibition Michigan, 3867 East Shaffer Road, Midland, Michigan 48642. (This proposal would amend the Michigan Constitution to legalize the use of marijuana for agricultural, personal, recreational, commercial or other purposes.)

Board action on agenda item: The Board approved the form of the initiative petition to amend the State Constitution as submitted by Abrogate Prohibition 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 Bradshaw; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of the form of an initiative petition to amend the State Constitution submitted for approval by Voters Not Politicians Ballot Committee, P.O. Box 8362, Grand Rapids, Michigan 49518. (This proposal would amend the Michigan Constitution to create the Independent Citizens Redistricting Commission and authorize the Commission to adopt reapportionment plans for Congressional, State Senate and State House of Representatives districts.)

Board action on agenda item: The Board approved the form of the initiative petition to amend the State Constitution as submitted by Voters Not Politicians with the understanding that the Board's approval does not

extend to: (1) The substance of the proposal which appears on the petition; or (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; or (4) Whether the petition properly characterizes those provisions of the Constitution that are altered or abrogated by the proposal if adopted. Moved by Pero; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. 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.

Adjourned: 11:50 a.m.



Chairperson



Vice-Chairperson



Member



Member

September 19, 2017
Date

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

Meeting
of the
Board of State Canvassers

July 26-27, 2018
Delta Township Hall
Lansing, Michigan

Called to order: 10:02 a.m. on July 26, 2018.

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

Members absent: None.

Agenda item: Consideration of meeting minutes for approval.

Board action on agenda item: The Board approved the minutes of the June 20, 2018 meeting with the following correction: The spelling of Member Bradshaw's first name. Moved by Bradshaw; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of proposed software upgrades for election management software submitted by ES&S. (The proposed changes would modify the format of canvass reports and collection of data on Election Night.)

Board action on agenda item: The Board approved the use of Electionware version 6.0.0.0 and version 6.0.1.0 in the State of Michigan. Moved by Pero; supported by Bradshaw. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of a proposed de minimis modification to the election management system firewall submitted by ES&S. (The proposed change would update firewalls to address a potential vulnerability.)

Board action on agenda item: The Board approved the modification of Cisco firewalls used with ES&S firmware and software approved for use

in the State of Michigan. Moved by Bradshaw; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of initiative petition filed by Michigan One Fair Wage, P.O. Box 35174, Detroit, Michigan 48235.

Board action on agenda item: None (testimony only).

Agenda item: Consideration of initiative petition filed by MI Time to Care, P.O. Box 1502, Royal Oak, Michigan 48068.

Board action on agenda item: None (testimony only).

Recess: The Board recessed until 4:30 p.m. on July 27, 2018. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero. Nays: None. Motion carried. (Time: 12:22 p.m., July 26, 2018.)

The Board reconvened at 4:32 p.m. on July 27, 2018. Members present: Shinkle, Matuzak, Pero, Bradshaw. Members absent: None.

Agenda item: Consideration of initiative petition filed by Michigan One Fair Wage, P.O. Box 35174, Detroit, Michigan 48235.

Board action on agenda item: Two motions were offered. First, the Board moved to not certify that the legislative initiative petition filed by Michigan One Fair Wage contains at least the minimum number of valid signatures required under Article II §9 of the 1963 Michigan Constitution because it is ineligible for the ballot, because it does not meet the required form in that it intends to amend or revise the current minimum wage law by reference to its title only, rather than re-enacting and publishing those sections at length. Moved by Pero; supported by Shinkle. Ayes: Shinkle, Pero. Nays: Matuzak, Bradshaw. Motion failed.

Next, the Board moved to certify that the legislative petition filed by Michigan One Fair Wage contains at least the minimum number of valid signatures required under Article II §9 of the 1963 Constitution of the State of Michigan. Moved by Matuzak; supported by Bradshaw. Ayes: Matuzak, Bradshaw. Nays: Shinkle, Pero. Motion failed.

Agenda item: Consideration of initiative petition filed by MI Time to Care, P.O. Box 1502, Royal Oak, Michigan 48068.

Board action on agenda item: The Board certified that the legislative initiative petition filed by MI Time to Care contains at least the minimum number of valid signatures required under Article II §9 of the 1963 Constitution of the State of Michigan. Moved by Matuzak; supported by Bradshaw. Ayes: Matuzak, Pero, Bradshaw. Nays: Shinkle. Motion carried.

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

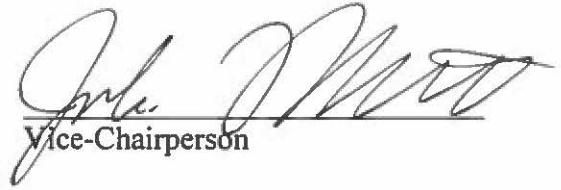
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Board action on agenda item: None.

Adjourned: 5:20 p.m. on July 27, 2018.



Chairperson



Vice-Chairperson



Member

Member

AUG. 24, 2018
Date

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Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Attachment D

Plaintiffs' Revised Discovery Questions
March 27, 2019

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**STATE OF MICHIGAN
COURT OF CLAIMS**

Committee To Ban Fracking In
Michigan and Luanne Kozma,

Plaintiffs,

v

Case No. 18-000274-MM
Hon. Stephen L. Borrello

Secretary Of State Ruth Johnson,
Director Of Elections Sally
Williams, in their official capacities, And
Board Of State Canvassers,

Defendants.

Ellis Boal (P10913)
Counsel for Plaintiffs
9330 Woods Road
Charlevoix, MI 49720
231-547-2626
ellisboal@voyager.net

Matthew Erard (P81091)
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Scott A. Mertens (P60069)
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mertenss@michigan.gov

Heather S. Meingast (P55439)
Assistant Attorney General
Counsel for Defendants
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Lansing, MI 48909
517-335-7659
meingasth@michigan.gov

Plaintiffs' Revised First Interrogatories and Requests

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You may ignore plaintiffs' first interrogatories and requests filed last week. This will substitute for them. Please respond within 28 days (by April 24, 2019) to the following discovery questions and requests under MCR 2.300 et seq.

1. As seen in exhibit 21 of the Kozma affidavit in *CBFM v Director of Elections*, No. 16-000122-MM, defendants and the court knew during that litigation that petition sheets, on which CBFM was continuing to collect additional signatures after the filing deadline had passed for the November 2016 election, bore the statement that the proposal was to be “voted on in the November 8, 2016 General Election.” During the litigation defendants told the court of claims that if and when CBFM obtained the required additional signatures it “will be able to file their petition.” Defendants repeated this to the court of appeals and supreme court. Now, after CBFM obtained the required number with the same quoted wording on the sheets, defendants argue differently, that due to the quoted wording CBFM could not file and in fact did not file the signatures on November 5, 2018. Please provide all non-confidential documents, emails, meeting minutes, and internal correspondence among the defendants or with others regarding the change of heart.

2. Defendants acknowledge that CBFM “tendered” signatures on November 5, 2018. Please provide all non-confidential documents, emails, meeting minutes, and internal correspondence among the defendants or with others establishing that “tendering” is not “filing.”

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3. Defendants state that “ordinarily” petition sponsors include an election date, on the face of petition sheets. One sponsor who did not was Abrogate Prohibition Michigan, which filed a formatted petition sheet with no election date, for a constitutional amendment on August 14, 2017, which the canvassers approved as to form three days later (attached). Please produce copies of the faces of all formatted statutory or constitutional initiative petition sheets which the canvassers approved, or which they canvassed, from 1963 to date.

4. Supplementing the previous question, please include the statutory initiative petition to repeal the nonresident city income tax authorized by the uniform city income tax ordinance, contained in 1964 PA 284, which was the subject of OAG 5528 (1979), holding “In the event that there are insufficient signers on an initiative petition for the November general election ballot of 1980, the same petition forms may be circulated for filing for the 1982 general election ballot,” as well as the request, attachments, correspondence, and notes of conversations with Senator Gilbert DiNello who requested OAG 5528.

5. The legislature rejected 2009 SB 952 which would have provided that petition sheets must state on the front: “This proposal is to be voted on at the November [date of election] general election.” [https://www.legislature.mi.gov/\(S\(3bwkdmvvsagvIkneyn05qooj\)\)/mileg.aspx?page=getobject&objectname=2009-SB-0952&query=on](https://www.legislature.mi.gov/(S(3bwkdmvvsagvIkneyn05qooj))/mileg.aspx?page=getobject&objectname=2009-SB-0952&query=on) . Please provide all non-confidential documents, emails, meeting

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minutes, and internal correspondence among the defendants or with others regarding the desirability or necessity of initiative proponents designating an election date on formatted petition sheets, and state why defendants' guidelines for initiative and referendums,

https://www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf, omit any prescription for designating an election to be voted on.

6. Please identify the date, circumstances, and reasons regarding any other instance of initiative signature sheets tendered by a proponent being rejected by the SOS for filing, particularly since *Citizens Protecting Michigan's Constitution v SOS*, 280 Mich 273 (2008) when the court of appeals at page 286 instructed SOS “Upon the filing of a signed petition, the Secretary must 'immediately' notify the Board by first-class mail. MCL 168.475(1). The Secretary has no further duties until after the Board deems a petition sufficient....”

7. Complaint paragraph 33 asserts the SOS agent acknowledged the canvassers could overrule her rejection of CBFM's signatures. Among the movants for summary disposition is the canvasser board. Since this suit was filed the canvassers have met just once, for 11 minutes on February 25. The attached draft minutes do not show that the canvassers' attitude as to this suit was discussed – whether to fight it or settle it – nor do they show that the canvassers went into executive session where that might have been discussed. Complaint exhibit 3 at pages 4-5 notes that when the

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canvassers are eventually consulted on this matter (even in executive session) Member Norm Shinkle is expected to recuse himself. Please identify the authority for a motion to be filed on the canvassers' behalf without obtaining their instructions.

8. Please produce all correspondence, emails, transcripts, and notes of meetings or conversations involving defendants and the sponsor of the 2017 constitutional initiative petition of Abrogate Prohibition Michigan.

Respectfully submitted,

/s/ Ellis Boal

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

/s/ Matthew Erard

Matthew Erard (P81091)
Counsel for Plaintiffs
400 Bagley St. #939
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mserard@gmail.com

Dated: March 27, 2019.

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INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION

This proposed constitutional amendment would: (1) make the use of the cannabis plant lawful in Michigan; (2) allow for the agricultural, personal, recreational, medicinal, research, development, educational, industrial, and commercial uses, as well as other uses; (3) nullify all prohibitions of cannabis in any form; (4) impose no fines, no use taxes, no penalties, no regulations to diminish or prohibit use upon we the people. The full text of the proposed amendment, adding Section 28 to Article 1 of the State Constitution, is printed on the reverse side of this petition. This proposal is to be voted on in the next General Election.

We, the undersigned qualified and registered electors, residents in the county of _____, State of Michigan, respectively petition for amendment to constitution.

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 MONTH DAY | OF DAY | SIGNING 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. | | | | | | |

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ELECTIONS/GREAT SEAL

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.

☐ 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.

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.) _____

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 Abrogate Prohibition Michigan, 3867 E. Shaffer Rd. Midland, Mi. 48642.

INITIATIVE PETITION AMENDMENT TO THE CONSTITUTION

This proposal would add a new section 28 to Article 1 of the State Constitution to read as follows:

Section 28

- (1) The agricultural, personal, recreational, medicinal, commercial, industrial and other uses of Cannabis in any form by any person shall be lawful activity.
- (2) All prohibitions on the use of cannabis in any form by any persons are hereby null and void.
- (3) Use of Cannabis shall include, but not be limited to:
The possession, consumption, growing, manufacture, delivery, treatment, purchase, sale, transfer, and or transport of any plant, seed, flower, leaf, mixture, derivative, extract, product and or preparation of any part of any cannabis plant for all personal, recreational, religious, medicinal, research, development, educational, commercial and industrial purposes within the state of Michigan.
- (4) No excise tax, no fines, no fees, no regulation to diminish the use of Cannabis shall be levied or allowed.
- (5) This amendment shall be retroactive.
- (6) No agency of the state shall receive monies from the federal government or any other entity to be used in the promotion of continued prohibitions of Cannabis.
- (7) Severability: If any section, subsection or part of this amendment is for any reason held to be invalid or unconstitutional, the remaining sections, subsections, or parts of those sections shall not be affected, but will remain in full force and effect.

SAMPLE



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

Meeting
of the
Board of State Canvassers

August 17, 2017
Lansing Center, 333 East Michigan Avenue
Lansing, Michigan

Called to order: 10:06 a.m.

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

Members absent: None.

Agenda item: Consideration of meeting minutes for approval.

Board action on agenda item: The Board approved the minutes of the June 21, 2017 meeting as submitted. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Recording of the results of the August 8, 2017 special primary for the office of State Representative, 1st District.

Board action on agenda item: The Board recorded the results of the August 8, 2017 special primary for the office of State Representative, 1st District as certified by the Wayne County Board of Canvassers on August 16, 2017. Moved by Bradshaw; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Canvass and certification of the August 8, 2017 special primary for the office of State Representative, 109th District.

Board action on agenda item: Based on an examination of the returns received by the Secretary of State for the August 8, 2017 special primary, the Board certified that the attached report is a true statement of votes cast for the office of State Representative, 109th District. The Board further

certified that the persons named in the attached List of Nominees are duly nominated for the office of State Representative, 109th District, and are qualified to appear as candidates for that office on the November 7, 2017 special election ballot. The Board also authorized staff of the Bureau of Elections to represent the Board in any recount of votes cast at the August 8, 2017 special primary. Moved by Matuzak; supported by Pero. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried. Time of certification: 10:09 a.m.

Agenda item: Consideration of the form of an initiative petition submitted for approval by MI Time to Care, P.O. Box 1502, Royal Oak, Michigan 48068. (This proposal would enact the Earned Sick Time Act, requiring employers to provide sick leave for personal and family health needs subject to certain conditions.)

Board action on agenda item: The Board approved the form of the initiative petition sponsored by MI Time to Care 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 Pero; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of the form of an initiative petition to amend the State Constitution submitted for approval by Abrogate Prohibition Michigan, 3867 East Shaffer Road, Midland, Michigan 48642. (This proposal would amend the Michigan Constitution to legalize the use of marijuana for agricultural, personal, recreational, commercial or other purposes.)

Board action on agenda item: The Board approved the form of the initiative petition to amend the State Constitution as submitted by Abrogate Prohibition 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 Bradshaw; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. Nays: None. Motion carried.

Agenda item: Consideration of the form of an initiative petition to amend the State Constitution submitted for approval by Voters Not Politicians Ballot Committee, P.O. Box 8362, Grand Rapids, Michigan 49518. (This proposal would amend the Michigan Constitution to create the Independent Citizens Redistricting Commission and authorize the Commission to adopt reapportionment plans for Congressional, State Senate and State House of Representatives districts.)

Board action on agenda item: The Board approved the form of the initiative petition to amend the State Constitution as submitted by Voters Not Politicians with the understanding that the Board's approval does not

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extend to: (1) The substance of the proposal which appears on the petition; or (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; or (4) Whether the petition properly characterizes those provisions of the Constitution that are altered or abrogated by the proposal if adopted. Moved by Pero; supported by Matuzak. Ayes: Shinkle, Matuzak, Pero, Bradshaw. 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.

Adjourned: 11:50 a.m.



Chairperson



Vice-Chairperson



Member



Member

September 19, 2017
Date

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STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

DRAFT

**Meeting
of the
Board of State Canvassers**

**February 25, 2019
Delta Charter Township Hall
Lansing, Michigan**

Called to order: 10:10 a.m.

Members present: Norm Shinkle – Chairperson
Jeannette Bradshaw
Aaron Van Langevelde

Members absent: Julie Matuzak – Vice Chairperson

Agenda item: Consideration of meeting minutes for approval.

Board action on agenda item: The Board approved the minutes of the November 26, 2018 meeting as submitted. Moved by Shinkle; supported by Van Langevelde. Ayes: Shinkle, Van Langevelde, Bradshaw. Nays: None. Motion carried.

Agenda item: Election of Board Chairperson and Vice-Chairperson for terms ending January 31, 2021.

Board action on agenda item: Jeannette Bradshaw was elected to serve as chairperson for the term ending January 31, 2021. Moved by Shinkle; supported by Van Langevelde. Ayes: Shinkle, Van Langevelde, Bradshaw. Nays: None. Motion carried.

Aaron Van Langevelde was elected to serve as the vice chairperson for the term ending January 31, 2021. Moved by Shinkle; supported by Bradshaw. Ayes: Shinkle, Van Langevelde, Bradshaw. Nays: None. Motion carried.

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Agenda item: Consideration of multiple proposed *de minimis* modifications to the ES&S voting system:

Board action on agenda item: The Board approved multiple *de minimis* modifications to the ES&S voting system:

1. The Board approved the use of texture-free exterior housing for the ES&S EVS 6010 Voting System Model DS-200 precinct tabulators in the State of Michigan. Moved by Shinkle; supported by Van Langevelde. Ayes: Bradshaw, Van Langevelde, Shinkle. Nays: None. Motion carried.
2. The Board approved the use of Okidata Model B431D, B431DN and B432DN printers for the ES&S EVS 6010 Voting System Model DS 450 high-speed tabulators in the State of Michigan. Moved by Van Langevelde; supported by Shinkle. Ayes: Bradshaw, Van Langevelde, Shinkle. Nays: None. Motion carried.
3. The Board approved the use of the Okidata Model B432DN printer for the ES&S EVS 6010 Voting System Model DS 850 high-speed tabulators in the State of Michigan. Moved by Shinkle; supported by Van Langevelde. Ayes: Bradshaw, Van Langevelde, Shinkle. Nays: None. Motion carried.
4. The Board approved the use of injection-molded ABS plastic for use with the collapsible ballot box used with the ES&S EVS 6010 Voting System Model DS200 tabulator in the State of Michigan. Moved by Van Langevelde; supported by Shinkle. Ayes: Bradshaw, Van Langevelde, Shinkle. Nays: None. Motion Carried.

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

The Board recognized Colleen Pero and Denise Barton for their service to the Board of State Canvassers.

Adjourned: 10:21 a.m.

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Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Attachment E

Remarks of delegates
Clyne Ward Durst Jr, Catherine Moore Cushman,
George Romney, Harold Norris
Constitutional Convention 1961

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CONSUMERS POWER COMPANY,
a Michigan Corporation, and
THE DETROIT EDISON COMPANY,
a Michigan Corporation,

Plaintiffs,

v

FRANK J. KELLEY, ATTORNEY
GENERAL, RICHARD H. AUSTIN,
SECRETARY OF STATE, and
BOARD OF STATE CANVASSERS,

Defendants.

No. 86-56487-CZ

HONORABLE ROBERT HOLMES BELL

FILED—30th CIRCUIT COURT

JUL 15 1986

BY: BETTY ST. JOHN

Deputy Clerk

JOHN D. PIRICH (P 23204)
MICHAEL J. HODGE (P 25146)
KEVIN J. MOODY (P 34900)
Attorneys for Plaintiffs

GARY P. GORDON (P 26290)
RICHARD P. GARTNER (P 27119)
TODD B. ADAMS (P 36819)
Assistant Attorneys General
Attorneys for Defendants

DEFENDANTS' BRIEF IN OPPOSITION TO
MOTION FOR SUMMARY DISPOSITION

FRANK J. KELLEY
Attorney General

Gary P. Gordon
Richard P. Gartner
Todd B. Adams
Assistant Attorneys General

Attorneys for Defendants

Business Address:
600 Law Building
525 West Ottawa Street
Lansing, MI 48913
(517) 373-6434

Dated: July 15, 1986

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constitutional amendments on the ballot. Delegate Durst stated in support of the inclusion of a 300,000 maximum on the number of signatures required:

"Now I don't think that there is any doubt that no matter how high this figure gets--even if you have to get millions of signatures in the State of Michigan--that the UAW-CIO would be able to put an amendment on the ballot if they so desired. Sure, it may cost them a little more. It may take a little more time and a little more effort, but they can do it. By the same token, Mr. Powell's organization, the Farm Bureau, if it really wants to put an amendment on the ballot has got the membership and also, I presume, the money--that I am not so sure of--but at least they have the facilities to put an amendment on the ballot if they really want to. I suppose there are other organizations that are similarly well organized. Probably the school groups, if they had an amendment they were particularly interested in, would be able to organize the manpower and the funds to put that particular amendment on the ballot. But I submit that the great bulk of the rest of the people of this State, who belong to none of these well organized organizations, would not be able to significantly participate in a drive to put an amendment on the ballot when this figure gets so high that it becomes too costly. Now I am concerned about this because I do not belong to either one of the large organizations I mentioned" 2 Official Record, supra, p 2460 (emphasis added.)

Delegate Cushman stated:

"Now, believe me, it takes a tremendous amount of organization, particularly where you are dependent on volunteers to get this many names [the 300,000 maximum on names being discussed] in valid names. I think that unless it were a professional organization I don't think that a much bigger limit could be reached, and I mean

by a professional organization one that had enough money to pay for their name and their circulation of it." Id., p 2462.

Delegate Romney stated in support of a 300,000 maximum on signatures required:

"As I see this proposal, it is designed primarily to enable citizens to use this route to secure constitutional amendment. Now as a rule they are not too well organized, and I want to emphasize what has been said here about the great difficulty in securing the votes needed to call this convention and then we only require 225,000, but we secured over 300,000 in order to have the overage to make good any signatures not properly secured, because there is a great deal of technicality required in securing valid signatures. So I think that if we should strike out the 300,000 figure we would make it very unlikely that a genuine citizens' petition drive could bring about an amendment for a constitutional convention of this character. It took a great deal of organized effort to get this one called on this basis and I certainly hope that you will defeat this amendment [deleting the 300,000 ceiling on required signatures] because I think the citizens of the State should have a target that is within their reach." Id., p 2463. (emphasis added.)

Finally, Delegate Norris in support of Delegate Romney's point stated:

"And if I sense anything--as a person who has been active in the last 25 years in a variety of efforts--it is that most people feel that the political wall is too high to jump, that ordinary citizens cannot accomplish change, and this leads to a state of apathy and inertia which, in my judgment, is very dangerous

in a democratic society. There has to be a holding forth of the possibility to adjust to change on behalf of ordinary people, not merely--and I think that Mr. Romney made an excellent point here--not merely people who are organized in a political group or on an economic basis but citizens' groups, generally." Id, p 2464.

The Michigan Constitutional Convention Delegates' comments parallel the general understanding of the history and purpose of the initiative and the referendum.

"While it has been held that the idea of direct legislation is as old as government, the adoption of the initiative and referendum as a part of the organic law in some jurisdictions came about as the result of the growth of dissatisfaction and distrust of the people for their legislative bodies and because of the increase of corruption in legislation due to the power and influence of large corporations and powerful groups of individuals, and was not due to any willful or perverse desire of the people to exercise the legislative function directly." 82 C.J.S., Statutes, § 116, pp 193-194 (emphasis added.)

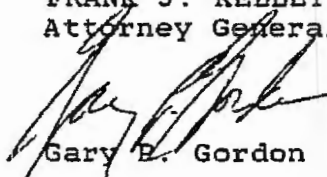
The 180 day rebuttable presumption strongly favors well organized, well funded, special interest groups who can gather the necessary signatures within the short time frame. See Comments of Constitutional Convention Delegates above. The 180-day rebuttal presumption strongly hinders the citizens' groups which the initiative was reserved for and which do not have the money and organization to gather signatures so quickly.

which the proposed amendment is to be voted on, provided another election for governor has not occurred. MCL 168.472a; MSA 6.1472(1) also places a significant burden on the exercise of the right of initiative without any corresponding clear benefit. MCL 168.472a; MSA 6.1472(1) demonstrates a profound suspicion and distrust of the initiative procedure contrary to the whole idea of the constitutional initiative as it has been successfully practiced for 40 years in the State of Michigan.

WHEREFORE, Defendants respectfully pray that this Court will deny Plaintiffs' Motion for Summary Disposition and grant Defendants' Summary Disposition and dismiss Plaintiffs' Complaint pursuant to MCR 2.116.

Respectfully submitted,

FRANK J. KELLEY
Attorney General



Gary E. Gordon

Todd B. Adams

Todd B. Adams
Assistant Attorneys General

Attorneys for Defendants

Business Address:
600 Law Building
525 West Ottawa Street
Lansing, MI 48913
(517) 373-6434

Dated: July 15, 1986
CON-B

Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Attachment F

Transcript
Board of State Canvassers
April 14, 2015

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STATE OF MICHIGAN
BUREAU OF ELECTIONS

2015 APR 20 AM 10:11

PUBLIC HEARING

Michigan Board of State Canvassers

Richard H. Austin Building

430 W. Allegan, 4th Floor

Training Room

Lansing, Michigan 48918

Tuesday, April 14, 2015

10:30 a.m.

ORIGINAL

APPEARANCES:

JEANNETTE BRADSHAW, CHAIR

NORMAN SHINKLE, BOARD MEMBER

JULIE MATUZAK, BOARD MEMBER

COLLEEN PERO, BOARD MEMBER

CHRISTOPHER THOMAS, SECRETARY

RECORDED BY:

REGENCY COURT REPORTING

3133 Union Lake Road, Suite A

Commerce Township, MI 48382

(248) 360-2145

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Hearing

03

MS. BRADSHAW: All those oppose?

Okay. So, what I'd like to do is, I'm

going to be moving item number five, which is the

consideration of initiation petition form submitted

by the Committee to Ban Fracking in Michigan, we're

going to move that to be the third item, so it will

be the next item. And the third item on the recall

petition is going to be -- going to be placed after

that. So, let's start with the consideration

initiation petition for the approval -- for approval

by the Committee to Ban Fracking.

MR. THOMAS: Okay. Good morning all.

MULTIPE SPEAKERS: Good morning.

MR. THOMAS: We received this petition

from the Committee to Ban Fracking out of Charlevoix.

We reviewed it. It's an initiation of legislation.

It requires 252,523 signatures. And the filing

deadline in order to make a 2016 election would be

June 1 of 2016, so there is still time. We've

reviewed this petition and find that it meets the

requirements. As you'll see, there is a printer's

affidavit indicating that it meets all the

requirements of type, size and content of warnings.

So we're available to answer any questions you may

have on it. We do recommend that you find that it

Lansing, Michigan

Tuesday, April 14, 2015 - 10:32 a.m.

MS. BRADSHAW: I'd like to call this
meeting of the Board of State Canvassers to order.And at the -- make note that the notice of the
meeting/affidavit of posting was done in a timely
fashion.

MR. THOMAS: That is correct.

MS. BRADSHAW: Let's move to a
consideration of the minutes of the meeting held.MS. MATUZAK: I move adoption of the
minutes as printed.MS. PERO: I support that, the meeting
of February 26th --

MR. SHINKLE: February.

MS. PERO: -- 2015

MS. BRADSHAW: February, yeah. So
it's -- I've been moved and supported to approve the
minutes from February 26th. Any other discussion on
that?

None. All those in favor?

MS. PERO: Aye.

MS. MATUZAK: Aye.

MR. SHINKLE: Aye.

does meet the form -- approve it as to form.

MS. BRADSHAW: Okay. I do have -- I

do have a couple of people who'd like to speak on
this item, and I see you're both from the Chamber of
Commerce.

MR. GORDON: Yes.

MS. BRADSHAW: Would you like to speak
together?

MR. GORDON: Yep.

MS. BRADSHAW: So I have James Holcomb
and Gary Gordon.MR. GORDON: Thank you. Madam Chair,
Members of the Board, my name is Gary Gordon. I'm
appearing today on behalf of the Michigan Chamber of
Commerce. With me at counsel table who will also be
speaking is James Holcomb, who is vice president and
general counsel of the Michigan Chamber of Commerce.We -- we come to you to speak in
opposition to the Board's approval of this petition.
There's several reasons, which we'll get into in some
detail, but in general it's -- we think it's
deceptive and misleading and doesn't meet the minimum
constitutional and statutory requirements. Now, the
-- the process of your approval of this as to form we
-- we understand is a voluntary process, that is it's

Page 6

1 not statutorily required before someone circulates
2 petitions. But once someone invokes this process, we
3 think the (inaudible) of the Board approving a
4 petition is -- is very important and ought not be
5 undertaken lightly, especially because of the
6 potential for challenge -- subsequent challenges.

7 The -- I think your staff will tell
8 you that your role is extremely limited. It's
9 basically -- I think they'll tell you it's kind of a
10 rubber stamp. That you are looking at the petition
11 only to determine whether or not the necessary
12 disclaimers, the font size, the size of the petition
13 and so on are contained on the petition. But I think
14 your approval process really goes beyond that. And
15 as evidence of that, I would point out that this
16 Board frequently, usually once petitions are filed,
17 rules on issues that might be related to substantive
18 form issues and results in appeals and whatnot.

19 So, over the years, this Board has
20 certainly exercised its discretion in determining
21 whether or not a petition meets minimum
22 constitutional standards, such as alter -- whether
23 the provisions of a constitutional amendment are
24 going to be altered or abrogated or listed or not,
25 and issues of that matter. You've refused to certify

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1 petitions on that basis. On the other hand, you've
2 approved petitions when there's been a challenge on
3 that basis which has led to appeals by the other
4 parties. Excuse me.

5 On this particular petition, there are
6 a number of defects, but most glaringly in the title
7 of the petition. This -- petitions to initiate
8 legislatures are subject to the same standards that
9 legislation are, they're required to have a title,
10 and the intent of the title is to advise the voters,
11 whether they be legislatures or signers to a petition
12 or eventual electors, of the subject matter of the
13 petition. It's a title object requirement, is what
14 the constitution states.

15 This petition does a number of things
16 that are not mentioned in the title at all. And in
17 addition, the petition has a number of -- of other
18 substantive constitutional errors. The -- it --
19 initially, you know, we're all familiar with the --
20 the Natural Resources Trust Fund, and that has gone -
21 - undergone a number of machinations from its initial
22 enactment as the Camera Trust Fund through other
23 initiatives and constitutional amendments. The fund
24 is based upon royalties from oil and gas revenues.
25 This petition will -- if approved and -- to ban

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1 fracking will drastically reduce available revenues
2 for purposes of the Natural Trust Fund for
3 recreational and land purchases and so on. That's
4 not disclosed anywhere at all in the title; in fact,
5 there's no mention of that, but it will have a
6 drastic and sweeping impact on that -- on that
7 pending legislation.

8 Another really, I think, very
9 important point to make -- can I have the petition?
10 Is the last paragraph of the petition, and it states
11 that any Michigan resident may enforce Sections
12 61.502 and 61.528 to an action brought between any
13 court possessing jurisdiction over the land where any
14 alleged violating activity occurs. And it allows the
15 moving party to be able to recover costs, attorney
16 fees and -- and so on. Well, what this does, it --
17 number one, it's not clear. I mean, if there's a
18 trespass action, jurisdiction could be in the local
19 district court. If the case is a subject of an
20 estate or trust action, jurisdiction could
21 theoretically be in the probate court; otherwise,
22 jurisdiction, apparently, may be in the circuit
23 court. But what this does is the primary enforcement
24 body over environmental regulation and the oil and
25 gas is listed in the Department of Natural Resources.

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1 The Court of Claims Act, as you may
2 recall a couple of years ago, was modified by the
3 legislature to vest jurisdiction in the Court of
4 Appeals, which is now a subset of the Court of
5 Claims, over all claims in contract, all claims in
6 tort, and all claims seeking mandamus or injunctive
7 relief against state officials. That means next time
8 I sue Chris Thomas, I've got to go to the Court of
9 Claims, probably. The -- which has not happened yet,
10 but undoubtedly will.

11 MR. THOMAS: There's still time.

12 MR. GORDON: We have not had the
13 pleasure of appearing there. The -- so the policy
14 reasons were to establish a simple venue to avoid
15 people from engaging in forum shopping, to establish
16 a cadre of jurists who are familiar with state issues
17 and state government and so on. What this provision
18 does is guts at least a part of the Court of Claims
19 Act, and apparently -- and it's not very well worded,
20 but apparently it seeks to deprive the Court of
21 Claims of jurisdiction to grant mandamus or
22 injunctive relief or other enforcement relief brought
23 against the Department of Natural Resources, but it
24 doesn't say that. It's silent. And that is a major
25 change in the jurisprudence of the state and it ought

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1 to be pointed out to people signing this petition
2 that we're going to -- we're going to change the way
3 enforcement actions are now handled. Also, it has
4 other constitutional issues that -- it's a repeal by
5 implication and other disfavored statutory
6 prohibitions by not mentioning the Court of Claims
7 Act and not pointing out that this Act is going to be
8 amended.

9 Another thing it doesn't do is that it
10 apparently bans fracking, I guess, on -- on the
11 effective date of the legislation, which is, I think,
12 45 days after your certification. Well, there are
13 untold numbers of contracts out there where people
14 have leased their land and fracking is currently in -
15 - going on, and fracking and oil extraction methods
16 are undoubtedly parts of contracts that people have
17 entered into with -- with oil companies. So, as of
18 the date of this Act, apparently the intent of the
19 statute is to render all existing contracts that use
20 the word fracking or any of these broadly based
21 definitions they have and say these contracts are no
22 longer invalid. The title doesn't say that. It
23 doesn't say anything about how, if you have a
24 contract currently, you're going to have to give that
25 up and any royalties that you've been recognizing

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1 from -- from receipt of -- of revenues based on
2 fracking cease as of the date of this. That's an
3 impairment of contract which is unconstitutional by
4 itself. But that aside, the people who seek to sign
5 this ought to be aware that, you know what, by
6 signing this, you're going to kill untold numbers of
7 contracts of people who currently have -- have
8 fracking ongoing.

9 Additionally, this -- this provision
10 constitutes a taking of property, the taking of
11 property rights, an impairment of someone's use of
12 their property without due process of law and without
13 advising the public of what they're doing, so -- and
14 the title doesn't disclose that either. It doesn't
15 say anything about, "Upon the effective date of this,
16 you will no longer be able to use your land in
17 certain ways. And the contracts and royalties upon
18 which you have come to rely are now null and void."
19 The -- the constitutional arguments aside, that ought
20 to be disclosed in the title, because that's the
21 intent of this legislature -- legislation and that's
22 what it does.

23 So, this is kind of a stealth
24 amendment, you know, it's significant by -- more
25 significant by what it doesn't say than what it does

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1 say. We think it's deceptive, it's misleading, it
2 doesn't advise the public of what this is about, and
3 the title, which is required, is woefully inadequate
4 and doesn't begin to pass constitutional muster. I
5 think it's within the purview of this Board to
6 consider those issues. And if you don't consider
7 them today, with all due respect, should these
8 petitions ever be filed with adequate signatures,
9 those will -- those issues will be presented before
10 the Board at that time, again. So, based upon these
11 various deficiencies, and quite frankly I have not
12 gone into -- into as much detail as we could on
13 these, we -- we would argue that this does not meet
14 form requirements, because the title is, indeed, part
15 of the form, part of the form laid out in the
16 statute, and it falls well short of that.

17 One other point that I failed to
18 mention with regard to the Court of Claims provision
19 is that this ought to be pointed out that it gives
20 standing to anybody to enforce this law. Well,
21 that's not the current state of the case law in the
22 state of Michigan, so I think it should be pointed
23 out in the title that this also gives any person
24 standing to attempt to enforce the provisions of this
25 law. That's significant and that ought to be

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1 mentioned also. So, for all those reasons, we would
2 request that this Board exercise its discretion or
3 refuse to exercise its discretion and not approve
4 this matter as to form.

5 Jim.

6 MR. HOLCOMB: Thank you, Madam Chair,
7 Board Members. We do appreciate you taking the time
8 to consider our comments today. And I'm not going to
9 reiterate everything Gary said, but just to
10 emphasize, the point of our members is we're very
11 supportive of the initiated process, but there should
12 be, you know, proper notice to people who are being
13 asked to sign these petitions. There are far
14 reaching and wide implications, policy within this
15 petition, they are not disclosed and we believe this
16 would be unfair to voters to have it put before them
17 and ask them to sign these petitions.

18 Our members have already responded to
19 us that they believe that, and that's why we're here
20 today and we would ask that you not approve this as
21 to form.

22 MS. BRADSHAW: Thank you. Any
23 questions from the Board?

24 MR. SHINKLE: I have a question of Mr.
25 Gordon.

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1 This last section on the back of the
2 petition, it appears that anybody who brings an
3 action in a local court against the state is entitled
4 to all costs including, without limitation, expert
5 and attorney fees. Would that be if they win or
6 lose?

7 MR. GORDON: It doesn't say. It's --

8 MR. SHINKLE: Well, it says they're
9 entitled to all costs, so -- if they bring an action
10 -- so to me that would be win or lose.

11 MR. GORDON: I think that's a fair
12 reading of that. And -- but it's certainly not --
13 not very clear and that obviously is contrary to the
14 standards of the court rules. And that's -- that's
15 another defect is that, you know, cost and attorney
16 fees are -- are quite often governed, at least in
17 part, by Michigan Court Rules, and this kind of
18 changes some of those requirements.

19 One thing I didn't mention is that
20 this -- this attempts to amend the statutes without
21 republishing those. That's a constitutional issue.
22 That probably doesn't need to be disclosed in the
23 title, but that -- that's another defect downstream.

24 Any other questions?

25 MS. MATUZAK: Well, I appreciate much

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1 doesn't appear anywhere in law, so -- but on the
2 other hand, this Board certainly does carry a great
3 deal of weight and prestige, especially downstream in
4 -- in appeals matters.

5 So, I guess, number one, if this
6 process is non-statutory in nature and you are
7 approving this as to form, then I think you ought to
8 exercise some of your non-statutory discretion and
9 look at whether this petition meets minimum statutory
10 requirements to form, which is the existence of a
11 title and a title to inform the voters, without
12 deception, without misleading them, and without
13 hiding information, what this thing is about. And so
14 I don't think there's a restriction on this Board and
15 the process that you're engaged in right now.

16 Secondly, with all due respect, I
17 don't think the courts have been totally clear on the
18 extent of this Board's functions. And the courts
19 have certainly entertained appeals from this Board,
20 and that's a process we all engage in in challenging,
21 for example, a petition that fails to or allegedly
22 fails to issue -- list all provisions of the
23 constitution that have been altered or abrogated.
24 Those challenges are brought to you time and time
25 again and they will continue to be in the future, and

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1 of what you've had to say; however, unless you can
2 present me with new case law that says we have the
3 ability to do what you're talking about -- every time
4 we've been sued, frankly, over the kind of arguments
5 you're making, the court has come back and said
6 pretty clearly that we approve to form, meaning the
7 form of the petition. And so, unless you're
8 presenting me something new, I -- I mean, the courts
9 have been very clear about this.

10 MR. GORDON: Well, respectfully, I
11 disagree that the courts have been clear about this.
12 The courts have entertained appeals from you where
13 you have approved or disapproved. The -- I think the
14 -- yeah, the law certainly could be more clear and
15 the courts could be more clear, but it boils down to
16 what's a matter of form. And, you know, why does
17 this Board exist? I mean, if you just exist to
18 measure the font size and -- and whether somebody put
19 in the proper disclaimers, you know, with all due
20 respect, Chris Thomas doesn't need the Board to do
21 that. What this Board -- any board exists to
22 exercise some discretion and some authority, and you
23 have -- you're exercising authority here and it's
24 non-statutory, you know. This process that you're
25 engaged in here is not required by law and, in fact,

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1 you have -- this Board has, on a number of times,
2 exercised discretion to rule on those issues. So,
3 and I think you'll be called upon to do so in the
4 future and I think the courts will review that in the
5 future. So, we're not engaged in a statutorily
6 mandated process, but the ramifications of this
7 Board's (inaudible) downstream I think are very
8 strong and the Board ought to be very careful in
9 exercising its discretion here in saying that this
10 petition, that is so misleading and deceptive, meets
11 statutory and constitutional requirements.

12 MR. SHINKLE: Okay. There's the
13 question. To the panel on this side, I mean, if it
14 doesn't meet statutory or constitutional
15 requirements, do we have the authority not to approve
16 it?

17 MR. THOMAS: Well, first of all, let
18 me just step back. I would never refer to you as a
19 rubber stamp. I don't know what he's talking about.
20 You know, the courts have basically said the
21 statutory initiative petition needs to follow the
22 same form that legislation does. So in the drafting,
23 the same drafting rules, essentially, apply in this
24 regard. So, as there's been litigation over titles in
25 the past, triple AAA case and whatnot back in '92 is

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1 a major one, and quite frankly the courts have
2 accepted some pretty thin titles. Now, where Mr.
3 Gordon's (inaudible) is on the substance of this
4 title as to what all must be included in this title.
5 We generally do not review, other than to determine
6 that, yes, in fact, there is a title. We do not go
7 into a legal analysis of this proposed statute and
8 get to the last section and go through all the
9 ramifications that that may entail and see whether
10 that's all included in the title. I dare say there's
11 a lot of legislation out there, we'd have a hard time
12 going back to the title and figuring out exactly
13 where's the sentence in that title that describes the
14 legislation.

15 MS. PERO: But is it supposed to?

16 MR. THOMAS: I assume in the broad --

17 MS. PERO: I thought it was supposed
18 to.

19 MR. THOMAS: -- general sense, yes.

20 MS. PERO: Yes, okay.

21 MR. THOMAS: -- specificity. And what
22 -- you know, and I would just caution you not to
23 reach into the abrogation issue here, okay? That's
24 an entirely different issue, constitutional question
25 for constitutional amendments, not for initiative of

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1 to see whether it passes or not and then let the
2 litigation continue.

3 So the issue here is: how far does
4 the Board go into in analysis of the constitutional
5 amendment or statutory initiative to look at all the
6 various ramifications that a very smart lawyer can
7 bring to you as arguments? And then if you follow
8 that to the extreme, then you would be writing a
9 legal opinion on the effect and impact of the
10 proposed legislation. It's a --

11 MS. PERO: But you're saying we just
12 have to --

13 MR. GORDON: Madam Chair, may I --

14 MR. THOMAS: -- very slippery slope.

15 MS. PERO: -- I mean, you've indicated
16 that a title is required.

17 MR. THOMAS: It is required, yes.

18 MS. PERO: Okay. And all you look
19 for: is there a title; and you don't really care
20 what the title says? I mean, that sort of seems
21 like that goes to form. I mean --

22 MR. THOMAS: It is form.

23 MS. PERO: -- I mean, are we going to
24 just say, you know, they can call it anything?

25 MR. THOMAS: Well, I don't think it's

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1 legislation.

2 MR. SHINKLE: Are you saying that this
3 -- if this is unconstitutional, the government
4 taking, that that's not something that we should go
5 into?

6 MR. THOMAS: I -- there's a legal
7 analysis involved, and we have a number of -- a few
8 of you are attorneys here and you can do that kind of
9 -- your analysis. Two of you are not attorneys and
10 would probably want all kinds of advice given before
11 a conclusion by this Board this -- that would say
12 that, "Yes, this statute is an unconstitutional
13 taking." I wouldn't make that assumption just
14 looking at it. I mean, I think there's some really
15 good analysis. And so the question comes down is:
16 does this Board undertake an advance -- I mean, most
17 of the courts don't even undertake this type of
18 analysis in advance of an election. They generally
19 will say -- so, you know, the legislature puts on --
20 they pass something like this, it'd be litigated,
21 nobody's going to stop the legislation midstream and
22 say, "Hey, you guys really in artfully drafted this
23 bill, you know, therefore we're going to stop you
24 from doing it." The courts have generally, when it
25 goes to these substantive arguments, they've waited

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1 just anything. I mean, you look here --

2 MS. PERO: If they just say the
3 purpose but no content, you don't really have to go
4 to the content --

5 MR. THOMAS: We look at what the
6 courts have approved in the past, they've been very
7 thin.

8 MS. PERO: To just say initiation of
9 legislation not to prohibit anything?

10 MR. THOMAS: I can show you multiple
11 page proposals of, you know, pretty thin titles --

12 MS. PERO: Mm-hmm.

13 MR. THOMAS: -- the courts have
14 refuted were okay. I mean, I think once we enter the
15 swamp --

16 MS. MATUZAK: Well, I perceive our
17 role, not as a rubber stamp. I think we have a much
18 bigger picture to look at. I want citizens to know
19 that if they sign this petition, using the correct
20 form, their signature will be accepted, assuming they
21 fill out the lines properly. I also then assume, if
22 they get enough signatures, that the Chamber will run
23 advertisements saying this is a terrible proposal and
24 you shouldn't vote for it, and the people supporting
25 it will run advertisements saying -- and we'll have

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1 an election and people will vote on it, and then
2 people will go to court, and that's sort of the
3 process. There's a lot of bad legislation written
4 across the way over there with really bad titles and
5 really bad content and it gets legislated out. I
6 think our role is to assure citizens that, if they
7 sign this petition, their signature will be accepted
8 because it's in the correct form.

9 I'm not interested in whether it's
10 true or not, that's all up to you. I want to
11 guarantee the right of citizens to sign a petition
12 and have their signature counted. So, the issues
13 about title, the issues about does it cover
14 everything on the back, that's all up to you guys to
15 fight out in court, on TV, in brochures, however
16 you're going to do it. But my job is to make sure a
17 citizen can sign this petition knowing that it's in
18 the proper form and their signature will be counted.

19 MR. GORDON: May I briefly respond,
20 Madam Chair?

21 MS. BRADSHAW: Very briefly, please.

22 MR. GORDON: Thank you. First of all,
23 I meant no offense by the rubber stamp. I was
24 indicating that, should you fail to examine some of
25 these, you are -- you are basically devolving your

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1 title is all about, that's what the title's about in
2 legislation. So, if you're going to look at it,
3 which we have an admission you do to determine
4 whether it's germane or not, then I think you ought
5 to look at it to see whether it meets minimal
6 requirements of advising people of what this is
7 about.

8 I don't think you want to approve a
9 petition that, you know, may be inadvertently or
10 deliberately deceptive. I don't know. I wasn't
11 there. I didn't draft it, but it's deceptive. It
12 doesn't tell people that you're going to gut the
13 Court of Claims jurisdiction. It doesn't tell people
14 you're going to wipe out some of their constitutional
15 rights. It doesn't tell people you're going to
16 remove -- you're going to stop the or at least impair
17 the money flow to the Land Trust Act. Those are
18 things that people ought to know before they sign
19 that. Those are things that ought to be included in
20 the title, and I would respectfully request that you
21 refuse to approve this as to form, because the title
22 is to -- is form.

23 Now what Mr. Thomas briefly mentioned
24 was that the courts don't rule on constitutionality
25 before the petition's filed. Well, the court won't

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1 role.

2 We're not talking about -- we're
3 confusing, I think, issues of substances versus
4 issues of form. Now, in response to Canvasser Pero,
5 Mr. Thomas said, "Well, we do look at the title," and
6 it -- you don't just look and see if there's a series
7 of words here after the word title. I assume that
8 you look and say, "Okay. Is this germane or not?"
9 If it has some kind of nonsensical sentence under the
10 -- under the word title and has no bearing to the
11 rest of the petition, then I assume that that will be
12 pointed out to you and that a recommendation would
13 be, "Well, don't approve that." Well, that's a
14 matter of form.

15 And rather than a slippery slope,
16 we're asking you to exercise your discretion in
17 looking at this title and taking it -- just as Mr.
18 Thomas has commented, you don't look at it to -- it's
19 not a meaningless act. Your approval is not a
20 meaningless act; your approval is the exercise of
21 some discretion. So here we're pointing out that
22 this title, in addition to all the other
23 constitutional infirmities -- infirmities, clearly
24 fails to advise someone signing this petition of the
25 subject matter of the petition. That's what the

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1 rule on the substantive constitutionality of a ballot
2 proposal. Not -- we're not talking about that here.
3 We're talking about form. If I took a case to the
4 court today and said, "Well, this ought to be
5 rejected because it constitutes a taking of property
6 without due process of law," the response of the
7 court would be, "Well, that's a hypothetical
8 question. Come back after the people have voted."
9 And so, to that extent, I agree with him. But we're
10 talking about form, not the substantive issue. Thank
11 you.

12 MS. BRADSHAW: Thank you very much.
13 Any other questions?

14 MS. PERO: No. But I do think the
15 title is --

16 MS. BRADSHAW: Thank you.

17 MR. GORDON: Thank you very much.

18 (WHEREUPON, Board Members speaking
19 among themselves at this time)

20 MS. BRADSHAW: I have one -- I've got
21 LuAnne Kozma from the Committee to Ban Fracking in
22 Michigan. If you could come forward, please.

23 MS. KOZMA: Yes. Good morning.

24 MULTIPLE SPEAKERS: Good morning.

25 MS. KOZMA: Thank you for meeting

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1 today. The reason why this is on the agenda is
 2 because the Bureau of Elections said it does meet all
 3 forms, that's why they called you here and put this
 4 on the agenda. And I do believe that the Chamber of
 5 Commerce has brought up a lot of, yeah, substantive
 6 things about the text, which is not supposed to be a
 7 part of the approval process at all. So, we do have
 8 all the sections of the initiated legislation in the
 9 summary at the top, and the full text, of course, is
 10 what people also are reading before they sign the
 11 petition. So, I just urge you to approve it for
 12 signature gathering and thank you for your
 13 consideration. If you'd like to ask any questions --
 14 MS. BRADSHAW: Any questions?
 15 MS. PERO: I -- I just have a simple
 16 question. Is there a reason why you didn't just
 17 state something more elaborative in the title, like
 18 initiation of legislation to ban fracking?
 19 MS. KOZMA: It's right there in the
 20 very first couple of words --
 21 MS. BRADSHAW: (Inaudible)
 22 MS. PERO: No, no, I mean -- I said in
 23 the title.
 24 MS. KOZMA: This is. The initiation
 25 of legislation title of the form is up here.

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1 MS. PERO: Okay.
 2 MS. KOZMA: That is not the title, if
 3 that's what you're referring to. But the very first
 4 sentence in the -- is right there. Is that -- did I
 5 answer your question?
 6 MS. PERO: Yeah.
 7 MS. KOZMA: Okay.
 8 MS. BRADSHAW: Any other questions?
 9 MS. KOZMA: I guess I have a question.
 10 I'm not sure if I can ask the staff or not, but -- is
 11 that permissible or not really?
 12 MR. THOMAS: No.
 13 MS. KOZMA: No, okay.
 14 MR. THOMAS: Yeah, go ahead.
 15 MS. KOZMA: Okay. Yeah, I just wanted
 16 to let the Board know that, okay, that, you know, I
 17 did present this to the staff several times over the
 18 last few weeks, and we went back and forth, fix this,
 19 fix that, and then everything was -- you know, this
 20 is the version that was okayed by them saying that
 21 there was no further additional form changes to make.
 22 MS. PERO: We don't have the benefit
 23 of knowing about the back and forth --
 24 MS. KOZMA: Sure. Absolutely.
 25 MS. PERO: -- so that's why we ask

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1 questions today.
 2 MS. KOZMA: Yeah. Absolutely. And
 3 that's why they strongly encourage it, so that we
 4 don't get to this point and waste all of your time.
 5 That, you know, wasn't something that was
 6 thoughtfully brought out. You know, the material on
 7 the left, for example, is something that's all new
 8 based on new statutes regarding out of state
 9 circulators and all of that checked out. And I
 10 would also say that this very similar wording was
 11 approved by you twice before by our committee exactly
 12 this way. Exactly this way. Slightly different
 13 wording, of course, but in exactly the same way, and
 14 you never brought up lack of title before, so we've
 15 been -- this is the third time that we're presenting
 16 exactly this type of format to you and you've
 17 approved the other two.
 18 MS. BRADSHAW: Okay. Any other
 19 questions?
 20 MR. THOMAS: Yes, we did --
 21 MS. PERO: I'm sorry?
 22 MR. THOMAS: There is provisions in
 23 there for enforcement in the title.
 24 MS. KOZMA: Right.
 25 MS. PERO: Okay.

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1 MR. THOMAS: It does not speak to all
 2 the ramifications of how it may impact other statutes
 3 --
 4 MS. PERO: Right.
 5 MR. THOMAS: -- and I'd be quite
 6 shocked to find that in any legislation drafted by
 7 (inaudible) go in in the title and talk about the
 8 ramifications to other statutes. I, quite frankly,
 9 have not seen that myself. But they do have a
 10 provision in here that says, "And to allow residents
 11 to enforce the provisions of this ballot language."
 12 MS. BRADSHAW: Any other questions for
 13 LuAnne?
 14 MS. PERO: No.
 15 MS. BRADSHAW: No? Thank you very
 16 much.
 17 MS. KOZMA: Thank you very much.
 18 MS. BRADSHAW: Okay. Questions for
 19 the staff?
 20 MS. PERO: No.
 21 MS. MATUZAK: All right. Well, I will
 22 move that the Board approve the initiative petition
 23 form submitted by the Committee to Ban Fracking in
 24 Michigan with the understanding that the Board's
 25 approval does not extend to the substance of the

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1 proposal which appears on the petition, the substance
2 of the summary of the proposal which appears on the
3 signature side of the petition, or the manner in
4 which the proposal language being affixed to the
5 petition.

6 MS. BRADSHAW: I have a motion that's
7 made. Is there support?

8 MS. MATUZAK: You can support it.

9 MS. BRADSHAW: Support. I'll support
10 it myself.

11 Is there any discussion -- more
12 discussion on -- it's been moved and supported. Are
13 you ready?

14 MS. PERO: I'm fine.

15 MS. BRADSHAW: Okay. It's been moved
16 and supported. All those in favor say aye?

17 MS. PERO: Aye.

18 MS. MATUZAK: Aye.

19 MS. BRADSHAW: All those oppose?

20 None. The motion has been moved and
21 supported to approve the initiative form petition
22 submitted by the Committee to Ban Fracking in
23 Michigan.

24 At this time, I'd like to move on to
25 our next -- the consideration of whether a recall

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1 MS. MATUZAK: I don't know.

2 MS. PERO: So we should have sworn
3 her?

4 MR. SHINKLE: Probably.

5 MS. BRADSHAW: The question that I
6 have as the Chair is: is there a definition between
7 a hearing and meeting? That's my question.

8 MS. PERO: Is there?

9 MS. MATUZAK: Is there -- is there a
10 definition between a meeting and/or a hearing? We're
11 going into a hearing, a recall hearing.

12 MS. PERO: Right.

13 MS. BRADSHAW: Whether -- is there a
14 definition of whether we have to swear people in if
15 it's a meeting or a hearing?

16 MS. PERO: I mean, is there a change -

17 -

18 MS. BRADSHAW: A hearing, yes. Yes,
19 that's what --

20 MS. PERO: -- in procedure?

21 MS. BRADSHAW: -- that's what I'm
22 looking for --

23 MS. PERO: Well, I have an overall
24 question, and we can talk about this now or later,
25 but at some point we talked about getting some

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1 petition filed on March 25, 2015 is -- states
2 factually and clearly the reasons for the recall of
3 the Berrien County Treasurer Bret Witkowski.

4 MS. MATUZAK: Madam Chair?

5 MS. BRADSHAW: Yes.

6 MS. MATUZAK: Can I have a point of
7 clarification?

8 MS. BRADSHAW: Yes, you may.

9 MS. MATUZAK: We had -- after the last
10 meeting, there was some discussion about a
11 requirement that people be sworn in. Some people
12 said it didn't make sense for petitions, other people
13 said it's the policy, now we're doing a hearing. I
14 would just like a clear statement of we swear people
15 in, we don't swear people in.

16 MS. PERO: I thought we always -- we
17 have always sworn in non-lawyers.

18 MR. SHINKLE: Yeah.

19 MS. PERO: And we --

20 MR. SHINKLE: I vote that it's the
21 Chair's discretion myself.

22 MS. MATUZAK: Okay. I just want to
23 know what the -- what the policy is --

24 MS. PERO: I'm sorry, the person that
25 appeared for the fracking people, was she a lawyer?

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1 administrative rules, and we've got some of these
2 things under our belt now and, you know, are we going
3 to get some rules or are we going to get some firm
4 procedures in place or should we go back to the
5 legislature and start talking about these -- these
6 recall petitions? You know, if you get a -- it used
7 to be, at least --

8 MS. MATUZAK: Right.

9 MS. PERO: -- if you got a ticket and
10 the person that gave you the ticket didn't show up in
11 court, then it all went away. Now, what happens
12 today? Someone brings a petition, we go through the
13 work of reading everything, I don't think the person
14 -- I don't see a person that --

15 MS. MATUZAK: The person who brought -

16 -

17 MS. PERO: -- that brought it is here

18 --

19 MS. MATUZAK: -- does not appear to be
20 here.

21 MR. THOMAS: Right.

22 MS. PERO: -- and now we are all here
23 and it's annoying, to say the least. I mean, it's
24 just --

25 MR. SHINKLE: Do we know that no one's

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1 here on behalf of the Petitioner?
 2 MS. PERO: Well, I see everyone --
 3 MS. BRADSHAW: I have the treasurer.
 4 MS. PERO: -- unless Lydia is --
 5 Lydia, are you --
 6 MR. WITKOWSKI: I'm -- I'm the county
 7 treasurer.
 8 MS. PERO: No, okay.
 9 MR. THOMAS: Lydia, are you in support
 10 --
 11 MS. PERO: I mean, I only see -- I
 12 only see secretaries.
 13 MS. MATUZAK: Denise. Denise.
 14 MS. BARTON: Madam Chair Person, you
 15 had a question about a meeting versus a hearing. In
 16 the rules that have been promulgated, it says here,
 17 under rule 168.841, defines a hearing as a hearing on
 18 the canvass of an initiative or referendum petition
 19 or a hearing on the canvass of a nominating petition.
 20 MS. MATUZAK: So that was written even
 21 before we became recall --
 22 MS. BARTON: Correct.
 23 MS. PERO: Yeah, so that doesn't have
 24 anything to do with this, right?
 25 UNIDENTIFIED SPEAKER: Are you all

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1 right?
 2 SALLY: Yes, I'm fine. Please
 3 continue.
 4 MR. SHINKLE: She thought she was
 5 going to have to testify.
 6 SALLY: Yes, I'm the sponsor.
 7 MS. VALLES: (Inaudible) knocked her
 8 over.
 9 MS. BRADSHAW: Okay. Keep going,
 10 please. Okay, yeah.
 11 MS. BARTON: That wasn't funny. Okay.
 12 So, Sally's okay, we can proceed.
 13 MS. BRADSHAW: Are you okay Sally?
 14 SALLY: I'm fine.
 15 MS. BRADSHAW: Okay. All right.
 16 MS. BARTON: Okay.
 17 MR. THOMAS: (Inaudible)
 18 MS. BARTON: As we know, these were
 19 rules that were promulgated prior to the Board having
 20 been vested with the authority by the legislature to
 21 do more.
 22 MS. BRADSHAW: Okay. All right.
 23 MS. BARTON: And but I just wanted to
 24 enlightening you that that was the definition, which
 25 doesn't seem to fit with current circumstances.

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1 MR. THOMAS: I mean, the history and -
 2 - where it became a general practice (inaudible) of
 3 the chair, Erane Washington, when she was chair, and
 4 she preceded one of you, I can't remember which one,
 5 instituted at that point except for attorneys, so
 6 that's where it came from, without distinction
 7 between a meeting and --
 8 MS. BRADSHAW: Okay.
 9 MR. THOMAS: It's really not been
 10 brought up since then as is there that distinction.
 11 I think we've done some analysis. We've got statute
 12 that talks about certain things, hearings and others
 13 that --
 14 MS. BARTON: Correct.
 15 MR. THOMAS: -- like what we just did
 16 is -- which you're going to find out is not in
 17 statute at all.
 18 MR. SHINKLE: But what's the
 19 punishment if we swear somebody in and we find out
 20 they're lying; do we have any enforcement
 21 capabilities there?
 22 MS. BARTON: Well, if somebody's an
 23 attorney, obviously we have a grievance process.
 24 MR. SHINKLE: Yeah, you can disbar --
 25 MS. PERO: Right.

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1 MS. BARTON: Right.
 2 MR. SHINKLE: -- not an attorney --
 3 MS. PERO: But we don't swear them in.
 4 MR. SHINKLE: -- perjure themselves
 5 under oath, do we have any recourse?
 6 MS. BARTON: Well, I guess we would
 7 have to probably look at the criminal laws that say
 8 whether there's a knowing misrepresentation and
 9 whether there was some kind of unsworn statement that
 10 was given to a public body, which I have not
 11 examined, but which I could --
 12 MS. BRADSHAW: Why don't -- why don't
 13 we --
 14 MS. BARTON: -- on that.
 15 MS. BRADSHAW: -- take this
 16 conversation, we'll look at it, bring it up later --
 17 MR. SHINKLE: And until then --
 18 MS. BRADSHAW: -- so we can move
 19 forward.
 20 MR. THOMAS: Until the call of the
 21 Chair.
 22 MS. BRADSHAW: Yeah. At the call of
 23 the Chair. Right now we are going to a recall
 24 hearing, so I would like to move that we go to the
 25 recall petition, okay?

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1 MR. SHINKLE: Sure.
 2 MS. BRADSHAW: Yes. Please.
 3 MR. THOMAS: So, we do have a recall
 4 petition that was submitted. We've provided you with
 5 copies of both the Petitioner and the office holder's
 6 responses. We complied with the statutory timeframe,
 7 which are knowingly typed and requires us to set the
 8 meeting within 24 hours within the 10 to 20 day
 9 window. We have met that.
 10 I believe the treasurer, Mr.
 11 Witkowski, is here today. The Petitioner, as far as
 12 I know, is not here today. We've received, again,
 13 responses and counter-responses. And so the petition
 14 is now before you to determine whether it's of
 15 sufficient clarity and whether it's factual.
 16 MR. SHINKLE: I have a couple
 17 preliminary questions. Does the petitioner have to
 18 be a resident of the state of Michigan to be a
 19 petitioner?
 20 MR. THOMAS: We have taken that
 21 position because the constitution talks about
 22 electors recalling office holders. So we have taken
 23 the position for many years now that that -- the
 24 whole process, the elector must -- elector of the
 25 district must present the petition, file a petition

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1 for approval (inaudible) clarity and now the factual
 2 analysis. So, yes, we have taken that position.
 3 MS. PERO: And is this person an
 4 elector when he's moved out of state but maintains --
 5 it seemed to make clear in the letter that he has no
 6 intention of moving back here.
 7 MR. SHINKLE: Well, he said that.
 8 MS. PERO: That's what I said. He
 9 makes it clear in his letter.
 10 MR. THOMAS: Is -- yeah. So, that is
 11 generally, you know, now (inaudible) on that area of
 12 residency.
 13 MS. PERO: Right.
 14 MR. THOMAS: So, he owns a house in
 15 St. Joseph, and he made it fairly clear and made it
 16 clear in his statements that he has an intent to
 17 return. I know he said in the paper that he does not
 18 have an intent to return to circulate a petition, but
 19 he did say -- he did the magic words of saying, "I
 20 have a house. I'm in Oregon. I intend to return
 21 until such time as my house sells."
 22 MS. PERO: Okay. I did not --
 23 MR. THOMAS: So, he's got a voter
 24 registration, he is a registered elector in St.
 25 Joseph. Nobody has, as far as I know, has challenged

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1 that registration based on his residency. So we've
 2 got a lot of people that are in his status, that have
 3 moved either out of the jurisdiction, out of
 4 Michigan, we have been told or have entered a consent
 5 decree in a federal case about canceling people
 6 without notice (inaudible) canceled them without the
 7 full fledged MERA notice with two federal
 8 electioneers with no response or a response coming
 9 back saying, "Yes, you're right. I'm no longer a
 10 resident. Take me off the file." So none of that's
 11 been done. He sits today as a registered qualified
 12 elector --
 13 MS. PERO: So he could come back and
 14 vote --
 15 MR. THOMAS: He could come back and
 16 vote --
 17 MS. PERO: -- for or against --
 18 MR. THOMAS: He could vote AV in the
 19 May 5th election.
 20 MS. PERO: Yeah. Okay.
 21 MS. BRADSHAW: Okay. So with that,
 22 would you be okay if I called --
 23 MS. MATUZAK: Mm-hmm.
 24 MS. PERO: Well, I -- before we even
 25 call the county treasurer, do you think this petition

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1 meets the requirement of being --
 2 MR. THOMAS: We have never really made
 3 a recommendation in that regard. I mean, you know,
 4 this is certainly new territory for the Board and for
 5 us. But, when you go into --
 6 MS. PERO: When he is saying he has
 7 brought shame and disgrace --
 8 MR. THOMAS: Yeah, so when you -- when
 9 you've got -- when this Board has looked at previous
 10 petitions and where people have made these --
 11 MS. PERO: Broad statements.
 12 MR. THOMAS: -- broad judgmental
 13 statements, the factuality or the facts from this and
 14 that has always been a steep (inaudible) to hold.
 15 So, in this case, I mean, there is definite conduct
 16 that is alleged. There's conduct that involves the
 17 office (inaudible). There are assumptions of lost
 18 productivity, which I don't see --
 19 MS. PERO: Well, you know, without
 20 this person --
 21 MR. THOMAS: -- yeah, I mean, so if
 22 you just parse the words --
 23 MS. PERO: Without the person here and
 24 based on these words, I would just move that it does
 25 not meet the requirements of --

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1 MS. MATUZAK: Support.
 2 MS. BRADSHAW: So do I hear a motion?
 3 MR. SHINKLE: There's a motion --
 4 MS. PERO: I just made one.
 5 MR. SHINKLE: I just have a discussion
 6 -- a comment I'd like to make. I'm looking at one of
 7 the police reports here dated February 11th. And in
 8 this report it says that Flamand says his -- and his
 9 wife have lived in the city of St. Joseph but had
 10 recently moved to Oregon, okay? That's dated
 11 February 11th, so I think there's a question as to
 12 residency. He's not here to protect himself. This
 13 could be an attempt just to try to smear somebody in
 14 the public record, that's -- it could be it; we don't
 15 know.
 16 MS. BRADSHAW: Okay. Any other
 17 further discussion? Hearing none, all those on the
 18 motion that it is not in a clear or factual for the
 19 petition --
 20 MS. PERO: Reject it because it is not
 21 --
 22 MS. MATUZAK: There is --
 23 MS. PERO: -- clear and factual.
 24 MS. MATUZAK: There is a motion here.
 25 MS. BRADSHAW: Okay.

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1 MS. PERO: Right.
 2 MS. BRADSHAW: The motion -- sorry --
 3 MS. MATUZAK: Under tab three.
 4 MS. BRADSHAW: -- the motion to move
 5 the Board of State Canvassers to determine that the
 6 recall petition filed by Ryan Flamand on March 25th
 7 does not state factually and clearly -- clearly each
 8 reason for recall of the Berrien County Treasurer
 9 Bret Witkowski. All those in --
 10 MS. PERO: That is what I moved and
 11 she supported.
 12 MS. MATUZAK: Supported.
 13 MS. BRADSHAW: -- all those in favor?
 14 MS. MATUZAK: Aye.
 15 MS. PERO: Aye.
 16 MR. SHINKLE: Aye.
 17 MS. BRADSHAW: All those oppose?
 18 MR. WITKOWSKI: Thank you for making
 19 it last, too. I saw all those people --
 20 MR. SHINKLE: You never went on the
 21 record.
 22 MS. BRADSHAW: Is there any other
 23 business that we need to discuss today before we --
 24 MS. PERO: Well, I still want to go
 25 back to this whole issue of getting rules or process.

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1 I -- I really think that -- or do we go back to the
 2 legislature? I think this is crazy --
 3 MR. WITKOWSKI: Thank you for your
 4 time.
 5 MS. PERO: -- that we end up reading
 6 all of these things, people pull them out, we have to
 7 proceed whether or not the person's here. There are
 8 so many things, frankly, about this legislation that
 9 I think we rushed through and I don't think that the
 10 timing of everything was thought out. I mean, we
 11 don't get things until the night -- we don't have to
 12 get things until the night before. That's
 13 ridiculous.
 14 MR. THOMAS: Yeah. And I would -- I -
 15 - so when this first passed, the Board held a number
 16 of meetings --
 17 MS. PERO: Right.
 18 MR. THOMAS: -- on the statute and we
 19 talked about what's factual and what's not factual
 20 and what's truthful and what's not truthful and all
 21 that good stuff, and it didn't seem at that time that
 22 anyone -- that there was any clear indication, like,
 23 "Okay, we can pass a rule that says this is what
 24 factual means," for example. Now, what we have now
 25 learned going through a couple of these are the

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1 procedural issues.
 2 MS. PERO: Yeah. Absolutely.
 3 MS. MATUZAK: Right. Right.
 4 MR. THOMAS: And I think that there
 5 are some rules we could do with procedure, but likely
 6 some statute we would need, and just -- I know you're
 7 aware of this, but this statute was a middle of the
 8 night statute.
 9 MS. PERO: Right. That's what I mean.
 10 MS. MATUZAK: Terrible.
 11 MS. PERO: It was rushed through.
 12 MR. THOMAS: We did not ever see the
 13 wording until it had passed both houses. So I do
 14 think that there are these very issues that we saw
 15 today where, regardless of the motive, the fact that
 16 the petitioner does not appear --
 17 MS. MATUZAK: Right.
 18 MR. THOMAS: -- should that be the
 19 consideration that says, if you're going to recall,
 20 you need to show up at this meeting and present your
 21 case as to -- you know, why rely on a Board to just
 22 figure this out.
 23 MS. MATUZAK: And it's not the first
 24 time this has happened.
 25 MR. THOMAS: No, it's not.

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1 MS. MATUZAK: It's happened before.
 2 MS. BRADSHAW: Leaves us to full
 3 interpretation and that might not be the
 4 interpretation of the petitioner.
 5 MS. MATUZAK: Right.
 6 MR. THOMAS: Yeah. And I think, quite
 7 frankly, that I wouldn't propose this as a rule --
 8 yeah, but -- so, as Denise just pointed out to me,
 9 the statute says a sponsor may appear, so there's a
 10 may. So the question is: do we go back to the
 11 legislature and ask for --
 12 MS. PERO: Yeah.
 13 MS. MATUZAK: Absolutely. If I've
 14 got to read all this stuff, they've got to show up.
 15 MR. THOMAS: That's -- I mean, I think
 16 that's -- that's a valid question. The timing of
 17 this issue, I mean --
 18 MS. MATUZAK: Yeah, the timing's
 19 crazy.
 20 MR. THOMAS: -- when it was all local,
 21 you know, with the Election Commission, the Election
 22 Commission --
 23 MS. PERO: Mm-hmm.
 24 MR. THOMAS: -- could all have
 25 surrogates serve if the officer didn't happen to be

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1 available. That's not the case with a state board.
 2 You do not have the ability to have substitutes. So
 3 this calling of a meeting within 24 hours and all
 4 this, particularly now that the election season has
 5 been elongated, so it's not like you can have an
 6 election within any 90 day period like before, now
 7 this thing is stretched out in six month increments.
 8 So, yeah, we're more than willing to look at
 9 legislation. We're more than willing to look at
 10 rules where, you know, we think that we can just do a
 11 rule without going and getting statutory --
 12 MS. PERO: Well, I would like the
 13 staff, if they could, come up with what your
 14 recommendations are, what can we do by rule, I mean,
 15 you know the kind of things we're concerned about,
 16 what can we do by rule, what do we have to do by
 17 statute, so that this can become a finely tuned
 18 machine. But it's just --
 19 MR. THOMAS: Yeah.
 20 MS. PERO: -- it is difficult. And
 21 especially, as you indicated, we don't have
 22 surrogates, so if two of us are out of town --
 23 MS. MATUZAK: What are you going to
 24 do?
 25 MS. PERO: -- the statute cannot --

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1 what happens?
 2 MR. THOMAS: Well, what happens if you
 3 miss the period, it's considered approved.
 4 MS. PERO: Yeah, and that's crazy, so
 5 people -- I think that's crazy.
 6 MR. SHINKLE: I think that what just
 7 happened today accomplished the
 8 petitioner/plaintiff's reason for filing. He drug an
 9 elected official through the mud publically and walks
 10 away, and to me that's the definition of a frivolous
 11 lawsuit and there should be some recourse against
 12 this guy who filed. That's simple. I think the
 13 legislature would not bat an eyelash tweaking the
 14 statute that provides for that.
 15 MR. THOMAS: We're more than happy to
 16 --
 17 MS. PERO: That'd be great.
 18 MR. THOMAS: -- probably give you some
 19 thoughts by the next meeting next month. Yeah. Be
 20 more than happy to.
 21 MS. BRADSHAW: Any other business?
 22 MS. MATUZAK: So my understanding is
 23 there's additional petitions, some of them being
 24 talked about, some of them seem more in process than
 25 others --

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1 MR. SHINKLE: Recall petitions?
 2 MS. MATUZAK: No, no, not that I know
 3 of.
 4 MS. PERO: You mean the marijuana?
 5 MR. THOMAS: Now they're in process
 6 somewhere, we just don't know. I would say that we
 7 have received a draft of one of the marijuana
 8 petitions.
 9 MS. MATUZAK: Okay.
 10 MR. THOMAS: It has not yet been
 11 formally submitted to us, but they will be shooting
 12 for our next meeting --
 13 MS. MATUZAK: Okay.
 14 MS. BRADSHAW: Okay.
 15 MR. THOMAS: -- which is right after
 16 Memorial Day.
 17 MS. MATUZAK: That was the gist of my
 18 --
 19 MS. BRADSHAW: Yeah.
 20 MS. MATUZAK: -- comments. I wanted
 21 to see if there's a way to move them forward to the
 22 next meeting.
 23 MR. THOMAS: Yeah, they are. And we
 24 are not planning, unless you decide otherwise, to
 25 call a meeting --

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1 MS. PERO: It depends on if someone
2 gets recalled, I guess.
3 MR. THOMAS: -- but with regard to the
4 initiations, you know, we're not into that do or die
5 period and they haven't asked for it. I mean, the
6 one group had said that our next meeting is fine with
7 them and we're scheduled --
8 MS. MATUZAK: Okay.
9 MS. BRADSHAW: Any other business?
10 I'll entertain a motion --
11 MS. PERO: So move.
12 MS. MATUZAK: Wait, there's a
13 question.
14 MS. BRADSHAW: I'm sorry.
15 MS. KOZMA: Would you mind if I just
16 ask, what was the vote on our initiative? I don't
17 think I caught it, if it was -- what was the vote --
18 MS. PERO: We voted it down. No. It
19 was four --
20 MR. SHINKLE: No, no, I didn't vote it
21 down.
22 MS. KOZMA: I just wanted to be clear
23 on it before I said --
24 MR. SHINKLE: I didn't vote. Never
25 asked for any abstention.

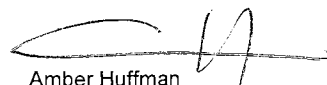
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1 MS. PERO: Oh, yeah, you have to ask -
2 -
3 MS. BRADSHAW: I have to ask for
4 abstentions.
5 MR. SHINKLE: It's the call of the
6 Chair.
7 MS. KOZMA: I just want to be sure I
8 understood. I didn't want anything wrong. Okay.
9 Thank you.
10 MR. SHINKLE: I'm sure she recorded me
11 as not voting.
12 MR. THOMAS: She will now.
13 MR. SHINKLE: Before the recorder
14 always said, "Did you vote yes or no?" They ask you
15 at the end, "Did you vote yes or no?" So --
16 MS. MATUZAK: He abstained.
17 MS. BRADSHAW: He abstained.
18 UNIDENTIFIED SPEAKER: So, sorry,
19 (inaudible), Channel 6. I just want to clarify, just
20 for the -- like, so it was a vote of three and then -
21 - and this gentleman didn't vote?
22 MS. PERO: That's correct.
23 UNIDENTIFIED SPEAKER: That's correct?
24 All right.
25 MS. PERO: Yes.

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1 UNIDENTIFIED SPEAKER: Thank you.
2 MS. BRADSHAW: Okay.
3 MR. SHINKLE: But I wasn't a no vote.
4 MS. BRADSHAW: No, you're -- no
5 voting, yes. We're adjourned, yes.
6 MR. SHINKLE: Thank you.
7 MS. BRADSHAW: We're adjourned. Thank
8 you.
9 (WHEREUPON, the hearing was adjourned
10 at 11:32 a.m.)
11 * * * * *

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1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF OAKLAND)
4 C E R T I F I C A T E
5
6 I hereby certify that this transcript,
7 consisting of fifty-three (53) pages, is a complete,
8 true, and correct record of the hearing held for the
9 Board of Canvassers on April 14, 2015.
10 I also certify that I am not a
11 relative of, employee of, or an attorney for a party;
12 nor am I financially interested in the action.
13
14 
15 Amber Huffman
16 Amber Huffman, CER #8378
17 Certified Electronic Reporter
18 3133 Union Lake Road
19 Commerce Twp., Michigan 48324
20 (248) 360-2145
21
22 Dated: April 25, 2015
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| 24:8 31:22 | 19:13 46:7 | 25 (2) 31:1 53:18 | |
| 43:24 51:7,8 | writing (1) 20:8 | 252 (1) 4:17 | |
| 51:19 | written (2) 22:3 | 25th (1) 43:6 | |
| wanted (4) | 34:20 | 26th (2) 3:15,20 | |
| 27:15 35:23 | wrong (1) 51:8 | 3 | |
| 49:20 50:22 | X | 30 (1) 1:7 | |
| warnings (1) | Y | 3133 (2) 1:23 | |
| 4:23 | yeah (29) 3:18 | 53:15 | |
| washington (1) | 15:14 26:5 | 32 (2) 3:2 52:10 | |
| 36:3 | 27:6,14,15 | 3602145 (2) 1:25 | |
| wasn (4) 24:10 | 28:2 31:18 | 53:16 | |
| 28:5 35:11 | 34:23 35:10 | 4 | |
| 52:3 | 36:24 37:22 | 430 (1) 1:5 | |
| waste (1) 28:4 | 39:10 40:20 | 45 (1) 10:12 | |
| way (6) 10:2 | 41:8,21 44:14 | 48324 (1) 53:16 | |
| 22:4 28:12,12 | 45:2 46:6,8,12 | 48382 (1) 1:24 | |
| 28:13 49:21 | 46:18 47:8,19 | 48918 (1) 1:6 | |
| ways (1) 11:17 | 48:4,19 49:19 | 4th (1) 1:5 | |
| weeks (1) 27:18 | 49:23 51:1 | 5 | |
| weight (1) 16:3 | years (3) 6:19 | 502 (1) 8:12 | |
| went (3) 27:18 | 9:2 38:23 | 523 (1) 4:17 | |
| 33:11 43:20 | yep (1) 5:9 | 528 (1) 8:12 | |
| whatnot (2) 6:18 | youre (1) 5:4 | 53 (1) 53:6 | |
| 17:25 | Z | 5th (1) 40:19 | |
| whod (1) 5:3 | 0 | 6 | |
| wide (1) 13:14 | 03 (1) 2:3 | 6 (1) 51:19 | |
| wife (1) 42:9 | 1 | 61 (2) 8:12,12 | |
| willing (2) 47:8 | 1 (1) 4:19 | 7 | |
| 47:9 | 10 (3) 1:7 3:2 | 8 | |
| win (2) 14:5,10 | 38:8 | 8378 (1) 53:14 | |
| window (1) 38:9 | 11 (1) 52:10 | 841 (1) 34:17 | |
| wipe (1) 24:14 | 11th (2) 42:7,11 | 9 | |
| witkowski (6) | 14 (3) 1:7 3:2 | | |
| 31:3 34:6 | | | |
| 38:11 43:9,18 | | | |
| 44:3 | | | |
| woefully (1) | | | |

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Appellants' Opening Brief
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Attachment G

OAG 5528, 8/3/79

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5528

August 3, 1979

INITIATIVE:

Petitions to amend or repeal existing law

CONSTITUTIONAL LAW:

Initiative petition

ELECTIONS:

Initiative

CONSTITUTION OF MICHIGAN:

Art 2, Sec. 9 (initiative petitions)

The people may initiate legislation to amend or repeal 1968 PA 284, chap 2.

In the event that there are insufficient signers on an initiative petition for the November general election ballot of 1980, the same petition forms may be circulated for filing for the 1982 general election ballot.

Honorable Gilbert J DiNello

State Senator

The Capitol

Lansing, Michigan

You have requested my opinion with respect to certain procedures for circulating initiative petitions to repeal the nonresident city income tax authorized by the Uniform City Income Tax Ordinance, contained in 1964 PA 284, chap 2, et seq; MCLA 141.601 et seq; MSA 5.3194(11) et seq. Your questions are:

'1. Inasmuch as these initiative petitions would be attempting to repeal an existing law, and no referendum petitions were filed, . . . can citizens now file initiative petitions?

'2. If the circulators find, as they approach the 160 day submission date prior to the election, they do not have sufficient signatures to place the issue on the 1980 General Election ballot, can they continue to circulate in anticipation of having the required number by 1982? Or, is there a time limit between the date of the first signature and the date of the last?'

Initiative and referendum are governed by the Michigan election law, 1954 PA 116, Chapter XVII, Sec. 471, et seq; MCLA 168.471 et seq; MSA 6.1471 et seq and Const 1963, art 2, Sec. 9, which states:

'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 referendum does not extend to acts to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts

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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.' (emphasis added)

There can be no question but 1964 PA 284, supra, was subject to referendum by the people in accordance with Const 1963, art 2, Sec. 9, supra. The time to seek a referendum has passed, and therefore, 1964 PA 284, supra, is no longer subject to referendum.

However, there is nothing to preclude the initiation of a law to amend or repeal 1964 PA 284, supra. An initiative of amendatory legislation is consistent with the principle that constitutional provisions which reserve to the people a direct legislative voice ought to be liberally construed. Michigan Farm Bureau v Secretary of State, 379 Mich 387; 151 NW2d 797 (1967).

It is my opinion, therefore, that the people may initiate legislation to amend or repeal 1964 PA 284, chap 2, supra.

In regard to your second question, 1954 PA 116, Sec. 471, supra, requires that petitions seeking an initiative to be filed at least 120 days before the election.

In OAG, 1973-1974, No 4813, p 171, 174 (August 13, 1974), it is stated:

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

The vote for the office of Governor in 1978 general election, as certified by the State Board of Canvassers, establishes the current basis for the circulation of initiative petitions. The identity of petitions circulated during the current term of the Governor are inseparably linked with the basis established by the November, 1978 election. Thus, the vote for Governor will be the basis of all initiative petitions circulated until the November, 1982 general election establishes a new basis.

It is my opinion, therefore, that in the event circulators of an initiative petition have insufficient signatures to file the petition for the 1980 general election ballot, they may continue to circulate the same petition forms for filing for the 1982 general election ballot.

Frank J. Kelley

Attorney General

<http://opinion/datafiles/1970s/op05528.htm>

State of Michigan, Department of Attorney General

Last Updated 03/09/2019 21:23:38<http://opinion/datafiles/1970s/op05528.htm>

State of Michigan, Department of Attorney General

Last Updated 11/10/2008 15:49:34

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Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Attachment H

MI Time To Care Petition
Form and Sufficiency Canvasser-Approved
8/17/17, 7/26-27/18

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INITIATION OF LEGISLATION

A petition to initiate 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.

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 | | | | |
|--|--|-----------|--------------|-------------------------------|----------|--|----|-----|------|--|
| CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/> | CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/> | | | | | CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/> | MO | DAY | YEAR | |
| 1. | | | | | | | | | | |
| 2. | | | | | | | | | | |
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| 9. | | | | | | | | | | |
| 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 this 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.

☐ 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 a 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 Mi Time to Care P.O. Box 1502, Royal Oak, MI 48068.

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

An initiation of legislation to 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 the result of a child's disability, health issues or issues due to domestic violence and sexual assault; to specify the conditions for accruing and using earned sick time; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "earned sick time act".

Sec. 2. As used in this act:

- (a) "Department" means the department of licensing and regulatory affairs.
- (b) "Director" means the director of the department of licensing and regulatory affairs or his or her designee.
- (c) "Domestic partner" means an adult in a committed relationship with another adult, including both same-sex and different-sex relationships. "Committed relationship" means one in which the employee and another individual share responsibility for a significant measure of each other's common welfare, such as any relationship between individuals of the same or different sex that is granted legal recognition by a state, political subdivision, or the District of Columbia as a marriage or analogous relationship, including, but not limited to, a civil union.
- (d) "Domestic violence" has the same meaning as provided in section 1 of 1975 PA 388, MCL 400.1501.
- (e) "Earned sick time" means time off from work that is provided by an employer to an employee, whether paid or unpaid, that can be used for the purposes described in subsection (1) of section 4 of this act.
- (f) "Employee" means an individual engaged in service to an employer in the business of the employer, except that employee does not include an individual employed by the United States government.
- (g) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 1 or more individuals, except that employer does not include the United States government.
- (h) "Family member" includes all of the following:
 - (i) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis.
 - (ii) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child.
 - (iii) A person to whom the employee is legally married under the laws of any state or a domestic partner.
 - (iv) A grandparent.
 - (v) A grandchild.
 - (vi) A biological, foster, or adopted sibling.
 - (vii) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (i) "Health care professional" means any of the following:
 - (i) Any person licensed under federal law or the law of this state to provide health care services, including, but not limited to, nurses, doctors, and emergency room personnel.
 - (ii) A certified midwife.
- (j) "Retaliatory personnel action" means any of the following:
 - (i) Denial of any right guaranteed under this act.
 - (ii) A threat, discharge, suspension, demotion, reduction of hours, or other adverse action against an employee or former employee for exercise of a right guaranteed under this act.
 - (iii) Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act.
 - (iv) Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under this act.
- (k) "Sexual assault" means any act that constitutes a violation of section 520b, 520c, 520d, 520e, 520f or 520g of the Michigan penal code, 1931 PA 378, MCL 750.520b, 750.520c, 750.520d, 750.520e, 750.520f, and 750.520g.
- (l) "Small business" means an employer for which fewer than 10 individuals work for compensation during a given week. In determining the number of individuals performing work for compensation during a given week, all individuals performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including individuals made available to work through the services of a temporary services or staffing agency or similar entity. An employer is not a small business if it maintained 10 or more employees on its payroll during any 20 or more calendar workweeks in either the current or the preceding calendar year.

- Sec. 3. (1) Each employer shall provide earned sick time to each of the employer's employees in the state.
- (a) Employees of a small business shall accrue a minimum of one hour of earned sick time for every 30 hours worked but shall not be entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit. If an employee of a small business accrues more than 40 hours of earned sick time in a calendar year, the employee shall be entitled to use an additional 32 hours of unpaid earned sick time in that year, unless the employer selects a higher limit. Employees of a small business shall be entitled to use paid earned sick time before using unpaid earned sick time.
 - (b) All other employees shall accrue a minimum of one hour of earned sick time for every 30 hours worked but shall not be entitled to use more than 72 hours of paid earned sick time per year, unless the employer selects a higher limit.
 - (c) Earned sick time shall carry over from year to year, but if a small business is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, and other employers are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year.
- (2) Earned sick time as provided in this section shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later. An employee may use accrued earned sick time as it is accrued, except that an employer may require an employee hired after April 1, 2015, to wait until the twentieth calendar day after commencing employment before using accrued earned sick time.
- (3) For purposes of subsection (1), "year" shall mean a regular and consecutive twelve-month period, as determined by an employer.
- (4) For purposes of earned sick time accrued under this act, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.
- (5) An employer other than a small business is in compliance with this section if the employer provides any paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2). An employer that is a small business is in compliance with this section if the employer provides paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2) provided further that that employees of the small business are entitled to use paid earned sick time before using unpaid earned sick time. For purposes of this subsection, "paid leave" includes but is not limited to paid vacation days, personal days, and paid time off.
- (6) An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly wage for that employee or the minimum wage established under the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424, but not less than the minimum wage rate established in section 4 of the workforce opportunity wage act, 2014 PA 138, MCL 408.414. For any employee whose hourly wage varies depending on the work performed, the "normal hourly wage" means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.
- (7) An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

- Sec. 4. (1) An employer shall permit an employee to use the earned sick time accrued under section 3 for any of the following:
- (a) The employee's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee.
 - (b) For the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's family member's mental or physical illness, injury, or health condition; or preventative medical care for a family member of the employee.
 - (c) If the employee or the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.
 - (d) For meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the child, or
 - (e) For closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.
- (2) If the employee's need to use earned sick time is foreseeable, an employer may require advance notice, not to exceed 7 days prior to the date the earned sick time is to begin, of the intention to use the earned sick time. If the employee's need for the earned sick time is not foreseeable, an employer may require the employee to give notice of the intention as soon as practicable.
- (3) Earned sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.
- (4) For earned sick time of more than 3 consecutive days, an employer may require reasonable documentation that the earned sick time has been used for a purpose described in subsection (1). Upon the employer's request, the employee must provide the documentation to the employer in a timely manner. The employer shall not delay the commencement of earned sick time on the basis that the employer has not yet received documentation. Documentation signed by a health care professional indicating that earned sick time is necessary is reasonable documentation for purposes of this subsection. In cases of domestic violence or sexual assault, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (a) a police report indicating that the employee or the employee's family member was a victim of domestic violence or sexual assault; (b) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization; or (c) a court document indicating that the employee or employee's

family member is involved in legal action related to domestic violence or sexual assault. An employer shall not require that the documentation explain the nature of the illness or the details of the violence. If an employer chooses to require documentation for earned sick time, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer.

(5) An employer shall not require disclosure of details relating to domestic violence or sexual assault or the details of an employee's or an employee's family member's medical condition as a condition of providing earned sick time under this act. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or employee's family member, the employer shall treat that information as confidential and shall not disclose that information except to the affected employee or with the permission of the affected employee.

(6) This act does not require an employer to provide earned sick time for any purposes other than as described in this section.

Sec. 5. (1) If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee shall retain all earned sick time that was accrued at the prior division, entity, or location and may use all accrued earned sick time as provided in section 4. If an employee separates from employment and is rehired by the same employer within 6 months of the separation, the employer shall reinstate previously accrued, unused earned sick time and shall permit the reinstated employee to use that earned sick time and accrue additional earned sick time upon reinstatement.

(2) If a different employer succeeds or takes the place of an existing employer, the successor employer assumes the responsibility for the earned sick time rights that employees who remain employed by the successor employer accrued under the original employer. Those employees are entitled to use earned sick time previously accrued on the terms provided in this act.

(3) This act does not require an employer to provide financial or other reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment.

Sec. 6. (1) An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. Rights protected by this act include, but are not limited to, the right to use earned sick time pursuant to this act, the right to file a complaint or inform any person about any employer's alleged violation of this act, the right to cooperate with the department in its investigations of alleged violations of this act, and the right to inform any person of his or her rights under this act.

(3) An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.

(4) The protections in this section apply to any person who mistakenly but in good faith alleges a violation of this section.

(5) There is a rebuttable presumption of a violation of this section if an employer takes adverse personnel action against a person within 90 days after that person does any of the following:

- Files a complaint with the department or a court alleging a violation of this act.
- Informs any person about an employer's alleged violation of this act.
- Cooperates with the department or another person in the investigation or prosecution of any alleged violation of this act.
- Opposes any policy, practice, or act that is prohibited under this act.
- Informs any person of his or her rights under this act.

Sec. 7. (1) If an employer violates this act, the employee affected by the violation, at any time within 3 years after the violation or the date when the employee knew of the violation, whichever is later, may do any of the following:

- Bring a civil action for appropriate relief, including, but not limited to, payment for used earned sick time; rehiring or reinstatement to the employee's previous job; payment of back wages; reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subjected to retaliatory personnel action or discrimination; and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as the court allows.
 - File a claim with the department, which shall investigate the claim. Filing a claim with the department is neither a prerequisite nor a bar to bringing a civil action.
- (2) (a) The director shall enforce the provisions of this act. In effectuating such enforcement, the director shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this act and investigate complaints received by the department in a timely manner.
- (b) Any person alleging a violation of this chapter shall have the right to file a complaint with the department. The department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable law, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the department may disclose his or her name and identifying information as necessary to enforce this chapter or for other appropriate purposes.
- (c) Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The department shall notify complainants notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The department shall promulgate the form and wording of such notices of violation including any method of appealing the decision of the department.
- (d) The department shall have the power to impose penalties and award an employee or former employee all appropriate relief including but not limited to payment of all earned sick time improperly withheld, any and all damages incurred by the complainant as the result of violation of this act, back pay and reinstatement in the case of job loss.
- (3) If the director determines that there is reasonable cause to believe that an employer violated this act and the department is subsequently unable to obtain voluntary compliance by the employer within a reasonable time, the department shall bring a civil action as provided in subsection (1)(a) on behalf of the employee. The department may investigate and file a civil action under subsection (1)(a) on behalf of all employees of that employer who are similarly situated at the same work site and who have not brought a civil action under subsection (1)(a). A contract or agreement between the employer and the employee or any acceptance by the employee of a contract or agreement that provides fewer rights or benefits than provided by this act is void and unenforceable.
- (4) In addition to liability for civil remedies described in this section, an employer who fails to provide earned sick time in violation of this act or takes retaliatory personnel action against an employee who exercises his or her rights under this act is subject to a civil fine of not more than \$1,000.00.
- (5) An employer that willfully violates a notice or posting requirement of section 8 is subject to a civil fine of not more than \$100.00 for each separate violation.

Sec. 8. (1) An employer subject to this act shall post written notice to each employee at the time of hiring or by April 1, 2019, whichever is later, including, but not limited to, all of the following:

- The amount of earned sick time required to be provided to an employee under this act.
- The employer's choice of how to calculate a "year" according to subsection 3 of section 3.
- The terms under which earned sick time may be used.
- That retaliatory personnel action by the employer against an employee for requesting or using earned sick time for which the employee is eligible is prohibited.
- The employee's right to bring a civil action or file a complaint with the department for any violation of this act.

(2) The notice required under subsection (1) shall be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the notice into such language.

(3) An employer shall display a poster at the employer's place of business, in a conspicuous place that is accessible to employees, that contains the information in subsection (1). The poster displayed should be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the poster into such language.

(4) The department shall create and make available to employers notices and posters that contain the information required under subsection (1) for employers' use in complying with this section. The department shall provide such notices and posters in English, Spanish, and any other languages deemed appropriate by the department.

Sec. 9. The department shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under this act. This program must include distribution of notices and other written materials in English and in other languages to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

Sec. 10. An employer shall retain for not less than 3 years records documenting the hours worked and earned sick time taken by employees. To monitor compliance with the requirements of this act, an employer shall allow the department access to those records, with appropriate notice and at a mutually agreeable time. If a question arises as to whether an employer has violated an employee's right to earned sick time under this act and the employer does not maintain or retain adequate records documenting the hours worked and earned sick time taken by the employee or does not allow the department reasonable access to those records, there is a presumption that the employer has violated the act, which can be rebutted only by clear and convincing evidence.

Sec. 11. (1) This act provides minimum requirements pertaining to earned sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, including a collective bargaining agreement, that provides for greater accrual or use of time off, whether paid or unpaid, or that extends other protections to employees.

(2) This act does not do any of the following:

- Prohibit an employer from providing more earned sick time than is required under this act.
- Diminish any rights provided to any employee under a collective bargaining agreement.
- Subject to section 12, preempt or override the terms of any collective bargaining agreement in effect prior to the effective date of this act.
- Prohibit an employer from establishing a policy that permits an employee to donate unused accrued earned sick time to another employee.

Sec. 12. If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act, this act applies beginning on the stated expiration date in the collective bargaining agreement, notwithstanding any statement in the agreement that it continues in force until a future date or event or the execution of a new collective bargaining agreement.

Sec. 13. The director may promulgate rules in accordance with the administrative procedures act of 1989, 1989 PA 306, MCL 24.201 to 24.328, as necessary to administer this act.

Sec. 14. If any portion of this act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect, impair, or invalidate the other portions or applications of this act that can be given effect without the invalid portion or application, and to this end the provisions of this act are declared to be severable.

INSTRUCTIONS: Use this form for the initial filing of a petition with the Board of State Canvassers, or when filing an amended petition with the Board of State Canvassers, for approval as to form.

PRINTER'S AFFIDAVIT

I, Mitchell D McNamara, being duly sworn, depose and say:

1. That I prepared the attached petition proof.
2. That the size of the petition is 8.5 inches by 14 inches.
3. That the heading of the petition is presented in the following form and printed in capital letters in 14-point boldface type:

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION
or
INITIATION OF LEGISLATION
or
REFERENDUM OF LEGISLATION
PROPOSED BY INITIATIVE PETITION

4. That the words, "We, the undersigned qualified and registered electors . . ." are printed in 8-point type.
5. That the two warning statements and language contained therein are printed in 12-point boldface type.
6. That the words, "CIRCULATOR - Do not sign or date . . ." are printed in 12-point boldface type.
7. That the balance of the petition is printed in 8-point type.
8. That the font used in the petition is Helvetica.
9. That to the best of my knowledge and belief the petition conforms to the petition form standards prescribed by Michigan Election Law and the Secretary of State.

Mitchell D McNamara
Printed Name of Affiant

Earned Paid Sick Time
Name of Proposal

Name of Proposal

Notary Public, State of Michigan, County of INGHAM

Acting in the County of Eaton (where required).

My commission expires JULY 8, 2020.

Subscribed and sworn to (or affirmed) before me on this 11 day of AUGUST, 2017.

by Mitchell D McNamara

Name of Affiant

[Signature]
Signature of Notary Public

Eric Kibbey

Name of Notary Public

ERICKIBBEY
Notary Public, State of Michigan
County Of Ingham
My Commission Expires 07-08-2020
Acting in the County of Eaton

Appellants' Opening Brief
CBFM et al v Benson et al
COA Case # 350161

Attachment I

Affidavit of Melissa Malerman, 7/8/16
filed in Michigan Comprehensive Cannabis Law Reform Committee v Johnson,
Court of Claims Docket # 16-000131-MM,
dismissed, 8/23/16,
leave to appeal denied by Court of Appeals, 9/7/16,
application for leave to appeal denied by Supreme Court, 500 Mich 858 (2016)

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STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN COMPREHENSIVE
CANNABIS LAW REFORM
COMMITTEE a/k/a MI LEGALIZE,

Plaintiffs,

No. 16-000131-MM

v

HON. STEPHEN BORRELLO

RUTH JOHNSON, Secretary of State,
CHRISTOPHER THOMAS, Director of
Elections, and BOARD OF STATE
CANVASSERS,

Defendants.

AFFIDAVIT OF MELISSA MALERMAN

Melissa Malerman, being first duly sworn, deposes and says as follows:

1. I bring this affidavit in support of the Brief in Support of Defendants' Motion for Summary Disposition.
2. This affidavit is based on personal knowledge. If called as a witness, I can testify competently to the facts stated in this affidavit.
3. I have been employed by the Bureau of Elections since December 20, 2010 and in such capacity serve as an Election Law Specialist and staff to the Board of State Canvassers.

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4. I am personally knowledgeable about provisions of the Michigan Election Law and Michigan Constitution that govern the canvass of statewide petitions for the initiation of legislation. Additionally, I have personal knowledge of the federal and state laws governing ballot printing and distribution deadlines, particularly those that are relevant to military and overseas civilian absent voter ballots.

5. An initiative petition must “be filed with the Secretary of State at least 160 days before the election at which the proposed law is to be voted on.” MCL 168.471. This deadline elapsed on June 1, 2016.

6. The initiative petition sponsored by Plaintiff was timely filed with the Secretary of State on June 1, 2016.

7. The Board of State Canvassers must complete the canvass of an initiative petition on or before the 100th day prior to the November general election, as (a) the Board of State Canvassers must approve ballot wording and assign a numerical ballot designation (i.e., “Proposal 16-1”) at least 60 days prior to Election Day, or by September 9, 2016 (see MCL 168.480 and 168.474a); and (b) the Legislature is afforded a period of 40 session days in which to enact the proposal, reject the proposal, or reject the proposal and submit an alternative proposal on the same subject to the electorate (see MI Const Art 2 Sec 9). In order

to comply with these deadlines, the canvass of Plaintiff's initiative petition must be completed on or before July 29, 2016.

8. Statewide ballot proposal petitions that are filed with the Secretary of State are subjected to random sampling, the process by which the Board of State Canvassers determines whether a sufficient number of valid signatures have been submitted in order to qualify for placement on the ballot.

9. Under the random sampling process:

a. Every petition sheet is reviewed. Any petition sheet that is determined to be wholly invalid is set aside and excluded from the universe from which the sample is pulled.

b. The remaining petition sheets are numbered and every signature appearing on numbered sheets is counted and added. This step yields the precise number of signatures that are within the universe of potentially valid signatures.

c. Once the total number of signatures is ascertained, random signatures are selected from the numbered sheets by a computer program for comprehensive scrutiny. The size of the sample can range from 500 to 4,000 signatures depending on the number of excess signatures filed. Copies of the petition sheets containing signatures within the random sample are made available to the petition sponsor and potential challengers.

d. Every petition entry within the random sample is reviewed for facial validity, a process by which Bureau of Elections staff examines each entry for fatal errors or defects such as an incomplete address, a signature dated after the circulator's signature is affixed, and so on. Signatures that pass the facial validity examination are checked against the Qualified Voter File (QVF) to verify the signer's registration status.

e. Challenges may be filed concerning the registration status of a signer or the authenticity of a signer's signature. MCL 168.476. A challenge must be filed within 10 business days of the date that copies of the petition sheets selected for the random sample are made available to potential challengers. The challenges are processed by comparing the challenges to the determinations rendered by staff under the facial validity and registration status examinations utilizing the QVF.

f. The computer program estimates the number of valid signatures contained in the filing based on the error rate found in the random sample, and a "Staff Report" is prepared. The Staff Report is presented to the Board of State Canvassers for consideration in determining whether the petition contains a sufficient number of valid signatures to qualify for placement on the ballot, and includes the staff's recommendation regarding the disposition of any challenges filed against the petition. The Staff Report must be

published “[a]t least 2 business days before the board of state canvassers meets to make a final determination on challenges to and sufficiency of a petition[.]” MCL 168.476(3).

10. It takes approximately 60 days to complete the random sampling process described above.

11. It is not possible to complete all of the required steps to finish the canvass of the initiative petition sponsored by Plaintiff by July 29, 2016.

12. If the Board of State Canvassers determines that an initiative petition contains a sufficient number of valid signatures, the proposed initiated law is transmitted to the Legislature.

13. If the Legislature does not enact the proposal within 40 session days, the Board of State Canvassers must prepare the proposal for the ballot by assigning a numerical ballot designation and approving ballot wording by the 60th day prior to the election, or by September 9, 2016. MCL 168.474a, 480.

14. Additionally, the Secretary of State must certify the November 8, 2016 general election ballot - - including any statewide ballot proposals - - to Michigan’s 83 County Clerks by the 60th day prior to the election, or by September 9, 2016. MCL 168.648.

15. The 83 Boards of County Election Commissioners are responsible for preparing and printing ballots for the November general election. MCL 168.689.

16. The minimum number of ballots required to be printed for the general election by each County Election Commission equals the total number of registered voters at the close of registration. Mich Admin Code R 168.774(6)(a). As of July 8, 2016, there are 7,342,497 registered voters in the State of Michigan.

17. Prior to printing, the Boards of County Election Commissioners are required to submit proof copies of each style of ballot used in their respective counties to the Secretary of State and to each candidate whose name appears on the ballot. MCL 168.711. The candidates are allotted two business days in which to review the ballot proofs and notify the Board of County Election Commissioners of any corrections. *Id.* In addition the Secretary of State reviews the ballot proofs for errors and if necessary, may require the Board of County Election Commissioners to make corrections. *Id.* Corrected ballot proofs must be submitted to the Secretary of State. *Id.*

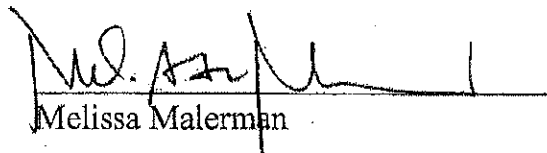
18. Every county produces multiple ballot styles – often numbering in the dozens or even hundreds per county – for the general election, based on the geographic boundaries of the various elective offices that will appear on the ballot. For example, a precinct may be split into two different school districts or county commissioner districts, necessitating the printing of two different styles of ballot for that single precinct.¹

¹ There are approximately 4,800 precincts in Michigan.

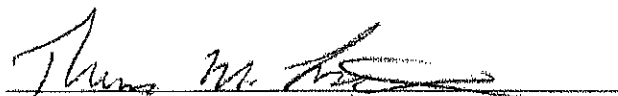
19. After the Secretary of State's review is complete and after the expiration of the two business day period for candidates to review proof copies of the ballots and any necessary corrections are made, the Board of County Election Commissioners may proceed with ballot printing. *Id.*

20. Absent voter ballots must be delivered by the Board of County Election Commissioners to the County Clerk by the 47th day prior to Election Day, or by September 22, 2016. MCL 168.713.

21. Absent voter ballots must be available for distribution to all voters, and especially military and overseas voters, no later than the 45th day before the November General Election, or by September 24, 2016. MCL 168.714. The deadline for distribution of absent voter ballots is governed by both the Federal Military and Overseas Voter Empowerment Act (MOVE Act), 52 USC 20302(a)(8), and Michigan Election Law, MCL 168.714 and 759a.


Melissa Malerman

Subscribed and sworn to before me on
July 8, 2016



THOMAS M. LUTTER
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CLINTON
MY COMMISSION EXPIRES DEC. 31, 2018
ACTING IN THE COUNTY OF Togham