

## Exhibit D

# BOARD OF STATE CANVASSERS MEETING

March 24, 2016

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

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

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

APPEARANCES:

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1                   Lansing, Michigan

2                   Thursday, March 24, 2016 - at 3:00 p.m.

3                   (Exhibits 1 and 2 marked)

4                   MS. BRADSHAW: Good afternoon. I'd like to kind  
5                   of keep on a schedule today. I'd like to call this meeting  
6                   of the Board of State Canvassers to order. With that, I  
7                   want to make sure that our Notice for our open meeting was  
8                   posted correctly.

9                   MR. THOMAS: The meeting Notice was posted under  
10                  the rules of the Board and the Open Meetings Act.

11                  MS. BRADSHAW: Thank you very much, Mr. Thomas.  
12                  At this time we'll have consideration for the minutes of the  
13                  meeting that was held on March 7th.

14                  MS. PERO: I move that we approve the minutes of  
15                  the March 7th meeting.

16                  MR. SHINKLE: Support.

17                  MS. BRADSHAW: It's moved and supported to approve  
18                  the minutes of the meeting held on March 7th.

19                  And that takes us to our third item on the agenda,  
20                  the --

21                  MS. PERO: We have to vote.

22                  MS. BRADSHAW: Oh, I'm sorry. Sorry about that.  
23                  We skipped on the Notice. So all those in favor or the  
24                  approval of the minutes of the previous meeting held on  
25                  March 7th say "aye."

1 MS. PERO: Aye.

2 MR. SHINKLE: Aye.

3 MS. BRADSHAW: Aye. All those opposed? Hearing  
4 none, the motion carries. Now we'll go to our third item on  
5 the agenda, the canvass and certification of the results of  
6 the Presidential Primary held on March 8th, 2016.

7 MR. THOMAS: Okay. We had a great turnout, that's  
8 for certain. Now, interestingly, our 2.5 million turnout  
9 was 35 percent of the registered voters. And in '72, it was  
10 actually 46 per, and in 1976 it was actually 39 percent, but  
11 it was a much lower number. The highest number was 1.9  
12 million, and that was in '72. And so this was -- this was  
13 about equal to the 1990 gubernatorial.

14 MS. PERO: I remember that one.

15 MR. THOMAS: Yeah, yeah. It was --

16 MR. SHINKLE: Engler Granholm.

17 MS. PERO: No, Engler Blanchard.

18 MR. THOMAS: Engler Blanchard.

19 MR. SHINKLE: Engler Blanchard?

20 MR. THOMAS: It was about 2.5 million, yeah. But  
21 it was a good turnout. We had some issues. We did have  
22 some places run out of ballots, which is never a good thing.  
23 Some of them had difficulty in -- they had a hard time with  
24 a baseline for the Democratic ballots, because the Democrats  
25 really haven't used the primary. President Obama was on it

1 in 2012 but it was obviously unopposed, so that was not a  
2 good one. So it was a good turnout on the Democratic side,  
3 as well.

4 And ballots, a couple areas ran out of both  
5 Republican ballots and Democratic ballots, which is not a  
6 good thing. So it's an area we're doing a little research  
7 on to find out how extensive that was, and we'll be putting  
8 procedures out on how to handle that. There's a number of  
9 places that actually have equipment to reproduce ballots on  
10 Election Day, and a lot of that was done. What we want to  
11 make sure is that they don't hold people waiting for those.  
12 The best thing is to go ahead and make copies. We always  
13 tell them don't use that last ballot, because you need to go  
14 make copies of that and people can vote those and they can  
15 be hand counted rather than, 1) turning people away or,  
16 2) asking them to wait around for an hour or two while  
17 somebody creates those ballots. So there's a little bit of  
18 work there that we'll be looking into. But beyond that, it  
19 was nice to see the turnout and nice to have that behind us.

20 So we have received the reports from the 83  
21 counties and we've compiled that for you and you can see the  
22 statewide results, which will be attached to this. Is that  
23 how we'll do this? So this will be attached, the canvass  
24 itself. I think it's noteworthy there were 1.3 million  
25 Republican ballots cast and 1.2 million Democratic ballots



1 cast. Donald Trump, the highest vote getter in the  
2 Republican Party with 483,000, and Bernie Sanders was the  
3 highest with 598,000. Now unlike any other election, we do  
4 report these out by congressional district, and it's  
5 necessary for allocation purposes for delegates that they  
6 use, as they go to their conventions -- to caucuses and  
7 conventions to select delegates. So that is also there.

8 Now in the memo you will see that we had one  
9 issue, and that issue was in the City of Detroit. There are  
10 about 100 absent voter counting boards and, obviously, the  
11 City of Detroit has both the 13th and 14th congressional  
12 districts within it. For whatever reason, on 24 of the  
13 absent voter counting boards they had a mixture of both the  
14 13th and 14th congressional districts. And we found this  
15 out after tabulation had begun, so there really was no way  
16 to undo that. So we worked closely with the Wayne County  
17 Board of Canvassers and the City of Detroit, and they have  
18 canvassed this with a separate break-out. Now, these totals  
19 are included within the congressional districts but they  
20 also give a separate break-out of these 24 that shows what  
21 the results are.

22 We've done some work in-house which we're going to  
23 give to the two political parties. I don't think the  
24 Republican Party is going to have a whole lot of issues.  
25 There weren't many ballots there. Let's see. We've got the

1 total number. There were 7,126 ballots all together in  
2 these mixed; 6,744 were Democrat and 382 were Republican.  
3 So we were able to go in and look through the Qualified  
4 Voter File the source of the voters in each of these  
5 counting boards who filed absentee applications and ballots  
6 were received back from them. So we can show the parties,  
7 if it's anything they need, what the proportion of each  
8 congressional district is within each of the AV counting  
9 boards. So I -- my guess is the numbers aren't large enough  
10 to affect a delegate one way or another. But if they were,  
11 they could probably get very close on using numbers to show  
12 how many -- in each of these counting boards how many were  
13 District 13 and how many were District 14.

14 MR. SHINKLE: Chris, was it in effect taking some  
15 from the 14th and putting them in the 13th and vice versa?

16 MR. THOMAS: Yeah.

17 MR. SHINKLE: So the question is the net change, I  
18 mean. Do you have that number?

19 MR. THOMAS: No, I don't really have a net. I can  
20 show you -- I can pass this around and you can kind of see  
21 how -- and they're not all lopsided, but some of them are  
22 fairly close. So like in the third, it was 321 and -- what  
23 have we got here? -- total. Okay. So we can show both not  
24 only the numbers, but we can show what the candidates got.  
25 And then I think they can make a pretty good estimate on

1 each one if that's necessary.

2 My sense is, you know, one, the vote turnout in  
3 Detroit was not that high. It was not as high as other  
4 parts of the state. I think they were in the mid 20s. They  
5 were not up to the 35 percent. So in any event, we are  
6 going to give the Democrat and the Republican parties this  
7 spreadsheet and -- if it's of assistance to them in coming  
8 up with any proportionate for allocation of delegates. And  
9 I think Detroit just didn't have that in mind when they put  
10 it together. Because normally Detroit will never split a  
11 precinct. Even their physical polling places are never  
12 split. So that has some precincts with very small numbers,  
13 to avoid splits. And I guess they just -- it was not in  
14 their mind, when they laid this out, the ballots were all  
15 the same, there's no difference on the candidates for ballot  
16 forms or anything.

17 And they're the only ones that are left that can  
18 really do these old AV counting boards. Everyone else has  
19 to have a counting board that corresponds to the precinct  
20 ballot. So that would have, I think, allayed that. But  
21 they're aware of it now, and I will make sure that somebody  
22 tells them in four years that they ought to do something  
23 different.

24 MS. PERO: Is there a reason that they're the only  
25 ones left that do this? I mean, will that change?

1 MR. THOMAS: Yeah, I think it may change.

2 Initially it was size.

3 MS. PERO: Right.

4 MR. THOMAS: I mean, nobody was anywhere close to  
5 their size. And I think there was miscommunication. While  
6 you do have to have a separate counting board for each  
7 precinct elsewhere, there's nothing to stop them from  
8 putting them into groups and counting them --

9 MS. PERO: Within, yeah.

10 MR. THOMAS: -- as like a large counting board.  
11 It's just that, you know, the ballots are separate and the  
12 equipment can take a number of ballot forms without any  
13 problem. So it may be a legislative change that's coming.

14 MS. PERO: Okay.

15 MS. BRADSHAW: How many many precincts does the  
16 City of Detroit have?

17 MR. THOMAS: Well, they've got just about 500 all  
18 together and then -- just a little under 500. And they have  
19 180 counting boards. So it was, you know, basically 25  
20 percent that had them mixed.

21 MR. SHINKLE: But the AV counting boards, the 100,  
22 are for a particular congressional district. None of them  
23 have both the 13th and the 14th in one counting board, do  
24 they?

25 MR. THOMAS: Well, in these 24 they did. That was

1 the problem is that they mixed the ballots in those two in  
2 those 24.

3 MS. PERO: Normally they'd have different ballots  
4 so they could do it differently.

5 MR. THOMAS: Yeah.

6 MS. PERO: There was no difference in the ballot.

7 MR. THOMAS: Right.

8 MS. BRADSHAW: Was there any other issue, though?  
9 Was there any tabulator issues or anything like that that  
10 came about?

11 MR. THOMAS: No. We heard very little in that  
12 regard, you know. I mean, we may have had a few calls, but  
13 on the whole it seemed to run pretty smoothly. It was an  
14 easy ballot, it's a short ballot. It works pretty well.  
15 Really, the biggest problem was when they started running  
16 out of them.

17 MS. PERO: Well, I went on MSU's campus with an  
18 international delegation, and no one was voting because it  
19 was during spring break.

20 MR. THOMAS: Right.

21 MS. PERO: And these were precincts that were  
22 entirely located on campus, and people were just there all  
23 day.

24 MR. THOMAS: Just sitting.

25 MS. PERO: They were happy to see us and show the

1 people how the machines worked.

2 MR. THOMAS: Yeah.

3 MS. PERO: They wanted them to vote, but no.

4 MR. THOMAS: Yeah, about anywhere else you would  
5 have gone you would have seen quite a bit of activity.

6 MS. PERO: Yeah.

7 MR. THOMAS: Yeah. So I think that's all we have  
8 really to report on this. It was, beyond that, a smooth  
9 election. And so we do have a recommended motion for you.

10 MS. PERO: Okay. I'll do that. I move that the  
11 Board certify that the attached numbers represent a true  
12 statement of the votes given in the March 8, 2016,  
13 Presidential Primary.

14 MR. SHINKLE: Support.

15 MS. BRADSHAW: Okay. It's been moved and  
16 supported that the Board certify that the attached is a true  
17 statement of the votes given on the March 8, 2016. And no  
18 further discussion, all those in favor say "aye."

19 MS. PERO: Aye.

20 MR. SHINKLE: Aye.

21 MS. BRADSHAW: Aye. All those opposed? None.

22 The motion carries.

23 MR. THOMAS: And I might add, you cannot recount a  
24 presidential primary.

25 MR. SHINKLE: Oh.

1 MS. BRADSHAW: All right. With that, we will come  
2 to our agenda item number four, which is recording the  
3 results of the special elections held on March 8th for the  
4 State Representative in the 75th, 80th and 82nd districts.

5 MS. MALERMAN: Thank you. Members, we had three  
6 vacancies in state representative districts that were filled  
7 by special election on March 8th. All of the districts are  
8 wholly contained within a single county, and when this  
9 happens it's the Board's role to record the results rather  
10 than to canvass and certify like you just did for the  
11 Presidential Primary. So we've prepared separate motions  
12 and memorandum for each of the districts so we can go  
13 through them one by one.

14 The vacancy in the 75th District is out of Kent  
15 County. David LaGrand was the representative who was  
16 elected at that election. He had 13,601 votes. And we have  
17 a recommended motion for you.

18 MR. SHINKLE: I would move that the Board record  
19 the results of the March 8, 2016 special election for the  
20 office of State Representative, 75th District, as certified  
21 by the Kent County Board of Canvassers on March 15, 2016.

22 MS. PERO: Support.

23 MS. BRADSHAW: Moved and supported that the Board  
24 record the results of the March 8, 2016 special election for  
25 the State Representative, 75th District. Any other

1 questions? Hearing none, all those in favor say "aye."

2 MS. PERO: Aye.

3 MR. SHINKLE: Aye.

4 MS. BRADSHAW: Aye. All those opposed? Motion  
5 carries.

6 MS. MALERMAN: Thank you. The next district is  
7 the 80th State Representative District. This is located in  
8 Allegan County. Mary Whiteford is the candidate who won  
9 that election. She had 14,860 votes out of 23,229 cast.  
10 And there is a motion in your packet.

11 MR. SHINKLE: I would move that the Board record  
12 the results of the March 8, 2016 special election for the  
13 office of State Representative, 80th District, as certified  
14 by the Allegan County Board of Canvassers on March 10th,  
15 2016.

16 MS. PERO: Support.

17 MS. BRADSHAW: It's moved and supported that the  
18 results for the March 8th special election held for State  
19 Representative, 80th District, be recorded. All those -- if  
20 there are no other questions, all those in favor say "aye."

21 MS. PERO: Aye.

22 MR. SHINKLE: Aye.

23 MS. BRADSHAW: Aye.

24 MS. BRADSHAW: All those opposed? Motion carries.  
25



1 MS. MALERMAN: Thank you. The last vacancy we  
2 have on the agenda is the one to fill the State  
3 Representative, District 82. That's located in Lapeer  
4 County. Gary Howell is the individual who was elected. He  
5 had 13,907 votes. There was a total of 23,741 votes cast.  
6 There's a motion in your packet.

7 MS. PERO: I move that the Board record the  
8 results of the March 8, 2016 election -- special election  
9 for the office of State Representative, 82nd District, as  
10 certified by the Lapeer County Board of Canvassers on  
11 March 15th, 2016.

12 MR. SHINKLE: Support.

13 MS. BRADSHAW: Moved and supported that the Board  
14 record the results of the March 8th special election for the  
15 office of State Representative in the 82nd District.  
16 Hearing no other questions, all those in favor say "aye."

17 MR. SHINKLE: Aye.

18 MS. PERO: Aye.

19 MS. BRADSHAW: Aye. All those opposed? Motion  
20 carries.

21 We'll be moving to our fifth item on our agenda,  
22 which is the continuation of our discussion and public  
23 comments in regard to proposed revisions of the Board's  
24 procedures for rebutting the statutory presumption that a  
25 signature on a petition that proposes an amendment to the

1 constitution or initiates legislation is stale and void if  
2 made more than 180 days before the petition is filed.

3 MR. THOMAS: I want to, first of all, update you  
4 on Senate Bill 776, which has passed the Senate, that sets  
5 forth a flat 180-day period without any rebuttable  
6 presumption. There was a hearing last week in the House  
7 Elections Commission committee. There was good discussion  
8 there, no activity since then. So the legislature is now on  
9 break, so we would expect when they get back there may be  
10 further activity regarding that bill. As we have digested  
11 the public comments and suggestions and also looked at our  
12 work load should the policy change, we are taking a look at  
13 using an electronic process to both, one, collect signatures  
14 that would be rebutted and then provide, two, options; one  
15 that would help us verify them quicker or, two, would  
16 actually have an electronic verification. So the Qualified  
17 Voter File does have a complete history from each voter, so  
18 we know exactly when they have registered to vote. By  
19 putting timelines in, we would know whether they were  
20 registered at the date that they signed and we would know  
21 whether they're registered at some time in the 180-day  
22 period. So all of that history is contained within the  
23 Qualified Voter File.

24 So what we're working on right now -- and we'll be  
25 asking for some comments -- would be a process where the

1 petitioners would provide us with a spreadsheet. It could  
2 be in an Excel format, for example, that would have -- use  
3 our voter ID number. It's not the driver's license but it's  
4 a voter ID number that is provided publicly, along with the  
5 full name of the voter, the year of birth, the street  
6 address where the person signed, county, city, and township,  
7 and the date the petition was initially signed, and then the  
8 number and -- petition sheet number and line number. And  
9 that would allow us to convert those QVF ID numbers into bar  
10 codes so that we could very quickly, off the sheet, bring  
11 that up on the screen and do the verification.

12 The other one is -- with the second method is a  
13 little more complicated, and we're just initially just  
14 scoping it out. And that would be to essentially have the  
15 system make the checks in terms of running it against time  
16 periods and then kicking out those where there is no batch.

17 So it is a feasible process for if we were to  
18 change policy, if the Board were to change it, that would  
19 allow us an opportunity to deal with it with maybe a little  
20 less paper than was initially requested in our first  
21 rendition of this. So that's what I wanted to report to you  
22 today, that we continue to look at that. And I think we  
23 will come back to you with a request whether you want to  
24 move forward with this or not. And then if you do, we'll  
25 probably want to move forward with one of these options in

1 order to make it a little more workable.

2 MS. BRADSHAW: Any questions from the Board before  
3 I go to the speakers? I do have a number of people who wish  
4 to speak on this agenda item. And it is public comment, so  
5 we will not have to swear you in. I'm going to start with  
6 Luanne Kozma.

7 LUANNE KOZMA: Thanks. Could I defer to -- until  
8 after Alan Fox speaks? Because he might cover some of what  
9 I'm going to talk about.

10 MS. BRADSHAW: Yes. Mr. Jeffrey Hank?

11 MR. HANK: Thank you, Board. Good afternoon.

12 REPORTER: Could you please state your full name  
13 and spell it for me?

14 MR. HANK: Jeffrey Hank, J-e-f-f-r-e-y H-a-n-k, on  
15 behalf of MIlegalize. We're looking forward to hopefully  
16 getting some progress done here. I've asked the Bureau a  
17 couple times to move forward with this and if not, to  
18 provide a form of an affidavit under the 1986 policy.  
19 Because nobody knows what that would look like if you don't  
20 take action and we -- nobody knows. So we just need  
21 something done. We're approaching pretty quickly a turn-in  
22 time here.

23 Regarding SB 776, regardless if that passes or  
24 not, ongoing campaigns that are operating under this premise  
25 need to be able to continue to do so. So even if the

1 legislature changes MCL 168.472(a), ongoing campaigns still  
2 have this opportunity to rebut signatures. And I would  
3 submit to you that under Article II, Section 9 of the  
4 Michigan Constitution, the legislature can't actually limit  
5 the amount of time of the petition to 180 days. They would  
6 have to put that up to a vote of the people, because the  
7 constitution provides for that four-year period. That's  
8 what it was before 168.472(a) came into effect. 168.472(a),  
9 all it does -- and there's great confusion about this -- is  
10 it treats signatures within that four-year period  
11 differently on how they're qualified. If they're within 180  
12 days, they're presumed valid by the Bureau when they canvass  
13 the petitions. If they're outside of 180 days, you have to  
14 rebut the signature for staleness. So before that went into  
15 effect, there was no difference on 180-day or not, or  
16 190-day old signature or whatever.

17 So just so you have some context on that, even  
18 going back to 1908, the early constitution, the term and the  
19 length of petitioning has always been set by the Michigan  
20 Constitution. The legislature actually cannot change that.  
21 They can try and they may well do, as we saw the Senate do,  
22 but that's going to be overturned in court. They can't  
23 change the constitution without a vote of the people. So  
24 just so you have that context, historically, prior to  
25 168.472(a) coming into effect, there was a four-year period

1 and within that four-year period there was no test for  
2 staleness. Staleness means someone is dead, they've  
3 registered in a different jurisdiction outside of the state,  
4 or it's outside of the four-year period. And you can go  
5 back and look at the 1923 case -- I think it's called  
6 Hamilton v Deland which discusses this, when we used to  
7 elect the governor by two-year periods -- that the  
8 legislature actually has no authority to change that  
9 constitutional period.

10 So I know there's a lot of talk about SB 776 but,  
11 you know, there's also a lot of case law about trying to  
12 retroactively apply new standards to an ongoing campaign.  
13 That, frankly, can't be done. So even if that is done, we  
14 still need some sort of intelligent process for rebutting  
15 these, the staleness. And I would submit this is really  
16 easy to do. You just give the Bureau authority to use what  
17 they think is reasonable to rebut it. And I think it's the  
18 QVF because that's what state law directs being used, but  
19 there's probably other ways. I mean, they could probably  
20 use the CVF or something. So I think you should just give  
21 them discretion to use reasonable means to rebut. We've  
22 proposed a single log similar to what Mr. Thomas said where  
23 we could, you know, line by line lay it out.

24 But June 1st is steadily approaching. That's the  
25 final deadline to turn in signatures. And we may want to

1           turn in much faster than that, and we've got to know how to  
2           do it. There's no -- there is no way to do it. So we hope  
3           you take some action on this really soon. I'd be happy to  
4           take any questions if anybody has any.

5                   MS. BRADSHAW: Any questions from the Board?

6                   MR. SHINKLE: Well, an affidavit is an affidavit.  
7           You make a statement and you just get it notarized. I mean,  
8           what kind of a form is Mr. Hank talking about?

9                   MR. THOMAS: Yeah. Mr. Hank has sent a letter to  
10          us with a suggested format, and we're responding to that.  
11          We should have that to him early next week which would be,  
12          under the current law, what would be required. Yeah, it's  
13          pretty straightforward. There's not much to it in terms of  
14          a documentation.

15                  MS. PERO: So you're saying there already is  
16          something in place?

17                  MR. THOMAS: Well, nobody has, first of all, ever  
18          asked. But, I mean, yeah. Our procedure was is that it's  
19          an affidavit from a clerk, or a certificate or affidavit  
20          from a clerk, and then a record showing that they were  
21          registered at the time they signed. So, I mean, one will be  
22          a registration record and the other will be an affidavit or  
23          certificate.

24                  MR. HANK: Mr. Shinkle, if I just may, it's not  
25          clear understand Michigan law whether an affidavit requires

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

8 MS. BRADSHAW: Thank you much.

9 MR. HANK: Sure.

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

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

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

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

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



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

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

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

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

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

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

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

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

6 MS. BRADSHAW: Thank you very much.

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

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

14 MR. THOMAS: Yes.

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

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

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

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

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

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

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

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

1           MR. FOX: I just got used to it finally. I want  
2           to say, first, I'm encouraged by Director Thomas' report on  
3           what the staff is looking at by way of using the Qualified  
4           Voter File rather than requiring the petitions to go to 1500  
5           different clerks to get affidavits as a way of verifying  
6           what would otherwise be stale signatures.

7           I just wanted to make one small point that's  
8           important. As he said, the Qualified Voter File has a full  
9           voter history with lots of different dates when a voter's  
10          status changes. And that's available to the staff; it's not  
11          available to the public. The public file has no history.  
12          If a voter moves from one municipality to another, they get  
13          a new voter ID number. Sometimes if their name has changed  
14          and they stay in the same municipality, they also get a new  
15          ID number. That's been inconsistent over time. And so  
16          those of us who play with the public version of the  
17          Qualified Voter File do our best to figure out when the  
18          record has -- represents the same person but has a different  
19          ID number or other different information. There's no clean  
20          way to do it, and some mistakes are made. A person with a  
21          fairly common name, particularly if other people with that  
22          same name are born in the same year, can easily be confused,  
23          if they move, which is the right person. Another important  
24          fact is that -- and properly so -- the file that the staff  
25          has access to has full dates of birth; the public file only

1 has the year of birth. And that also makes that comparison  
2 a little muddy.

3 That said, using the file that is available to the  
4 public, it's certainly possible to do the sorts of reports  
5 that the staff is looking at. They will not be 100-percent  
6 reliable, they'll be the best that can be done with what's  
7 available. And so my expectation is that some of the names  
8 that people verify will turn out not to be properly -- the  
9 correct person because of those sorts of ambiguities. I  
10 don't know if there's any way to avoid that. It's certainly  
11 an issue that people dealing with petitions and qualifying  
12 signatures for the ballot have had to deal with all along.  
13 It's not a huge number, but it's not going to be 100-percent  
14 foolproof. That said, I think it can be done and look  
15 forward to certainly giving it a shot in the next couple of  
16 months, once we have some certainty about exactly what it is  
17 that needs to be provided to the Bureau. Thank you. Are  
18 there any questions?

19 MS. BRADSHAW: Any questions from the Board?

20 MR. THOMAS: I think our ID number does stay. No?

21 MR. FOX: I've been playing with the Qualified  
22 Voter File more than anybody else over time. I'll say that  
23 and challenge anybody to disagree with that.

24 MR. THOMAS: Okay. Well, that's a point.

25 MR. FOX: It certainly changes whenever somebody

1 moves from one municipality to another and that's, I think,  
2 a recognition of the fact that by law people remain  
3 registered in a municipality, not registered with the state  
4 as a whole.

5 MR. THOMAS: Right; right.

6 MR. FOX: When names change, I've seen some cases  
7 where the ID number is maintained, some when it's not. And  
8 my guess is that has to do with how the local clerk  
9 processes such a change.

10 MR. THOMAS: Well, it's something we should sit  
11 down with you on -- we'd be happy to do that -- and get your  
12 expertise, as well.

13 MR. FOX: Okay. Be glad to do that. Thank you  
14 very much.

15 MS. BRADSHAW: Any other questions? Thank you.

16 MR. FOX: Thank you.

17 MS. PERO: Thanks.

18 MS. BRADSHAW: Luanne, are you ready?

19 REPORTER: Please state your full name and spell  
20 it.

21 MS. KOZMA: Luanne Kozma, L-u-a-n-n-e K-o-z-m-a.  
22 Okay. Thanks. And I'm not a lawyer.

23 MS. BRADSHAW: No worries, it's just public  
24 comment.

25 MS. KOZMA: But I might talk about a couple laws.

1 I had a prepared thing to say, but I think I'm just going to  
2 mention a few things here because some of it was already  
3 covered, and I didn't know about Mr. Thomas's new concept  
4 for what he's thinking of.

5 Last April this Board approved our petition as to  
6 form, as you know, and our signature gathering began with  
7 the law that's on the books now with the 180-day limitation  
8 with the rebuttable presumption. So even though we didn't,  
9 you know, understand all the ins and outs that we do now of  
10 the rebuttable presumption part, we certainly have enjoyed  
11 this law all this time for this whole year. And one of the  
12 reasons for your -- the Board's preapproval of the petition  
13 as to form in the first place is that you want -- I believe  
14 Ms. Matuzak might have mentioned this, that you want these  
15 petitions to be accurate and valid petitions so that when  
16 people are going out gathering signatures and signing  
17 petitions, that they know that this is going to be a real  
18 petition that's going to, you know, meet approval. And the  
19 whole idea there is that their signatures will count, you  
20 know, that it will not have all been for nought. And you've  
21 had this rebuttal procedure on the books for the past 30  
22 years, but it was never improved upon or explained to the  
23 public or to ballot initiative proponents for all those  
24 years. It's not on your website. It's only in the format  
25 of minutes of a meeting that was held 30 years ago. So a



1 lot could have been done to -- at any time since 1986 to  
2 improve the transparency of this process and facilitate it,  
3 you know, better. I guess it's great that you're doing it  
4 now. However, you know, here we figured it out now, the  
5 simple truth that the QVF does provide the information  
6 that's needed and that's all that's really been needed since  
7 1998 when the QVF was established.

8 But I'd like to make the big point about what  
9 we've called the two-timer policy, the concept that was  
10 adopted by the Board back in 1986 when it wasn't just a  
11 matter of proving that the signer was valid at the time that  
12 they signed but also during this period prior to submittal,  
13 180 days prior to submittal, so that a person needs to  
14 basically prove themselves valid twice. That is nowhere in  
15 the law. It is not in the constitution. And this Board has  
16 the policy to not make that same error again, but to fix it,  
17 and to, you know, correct that today or the next time you  
18 meet, so that we don't have this onerous process of trying  
19 to deal with, you know, different addresses. Are they --  
20 were they a voter at this address in January QVF? Were they  
21 at this address, at the address when they signed? The only  
22 thing that matters is the date that they signed. That's  
23 what they see on the petition sheet when they sign it. The  
24 petition sheet does not say, "Now, you've got to promise to  
25 still be a registered voter for your signature to count, you

1 know, later on in January." That's not there. So we can't  
2 put that stuff into the law. It's not something that the  
3 Board of Canvassers should be able to do. And I urge you to  
4 strike that from the new policy. It sure would make life  
5 easier for everyone on the staff, and all of the paperwork  
6 that's been, you know, suggested to attach to these  
7 petitions would be unnecessary. It would just be a matter  
8 of a simple verification, knowing full well that there are  
9 some problems, as Alan Fox just pointed out, with minor -- I  
10 would imagine it would be very few times that someone would  
11 not be found and it would not be completely accurate.

12 So we -- as Jeff Hank mentioned, we only have two  
13 months before the ultimate deadline but we, you know, might  
14 want to submit earlier. So we really do need to have the  
15 procedure changed in a timely fashion. We can't be dealing  
16 with something last minute like that. It's not fair to the  
17 voters who signed our petitions to enact an onerous policy  
18 that piles on these impossible burdens. I really do think  
19 it would be seen to outsiders, you know, even beyond the  
20 state that it would be -- to keep that two-timer policy in  
21 place with all these additional paperwork requirements, that  
22 it would just be another attempt to make it irrebuttable.  
23 And we don't want that to happen either. We want this to go  
24 forward and put this before the voters, and I think they're  
25 expecting that to happen.

1                   It's up to us, of course, to collect enough  
2                   signatures, which we're, you know, really working hard to  
3                   do. And this is not an easy process, as a person who is  
4                   just an average person. We've put a lot of our own money  
5                   into it. We're not getting, you know, huge donors from  
6                   afar, from out-of-state, pushing this process. This is a  
7                   real grassroots campaign by Michiganders who truly want to  
8                   see this on the ballot. And I think every campaign uses  
9                   this QVF database to validate signatures. We've been using  
10                  it to do this all along. And I guess I won't belabor that  
11                  point, because I think that's already been talked about.  
12                  I'm really pleased that we've hired Practical Political  
13                  Consulting, which I know you're very familiar with them.  
14                  They do a great job.

15                  So I really do think that our old signatures will  
16                  be rebutted accurately and fairly and there's really no  
17                  reason to impede that process. So thank you very much.

18                  MS. BRADSHAW: Any questions from the Board?  
19                  Thank you very much.

20                  MS. KOZMA: Okay.

21                  MS. BRADSHAW: Before I close out this agenda  
22                  item, is there anyone else who wishes to address the Board  
23                  on agenda item number five? Hearing none, is there any  
24                  other further business to be properly presented to this  
25                  Board today?

1 MR. THOMAS: Do you want to say something about  
2 the Davis case?

3 MS. BARTON: Sure.

4 MR. THOMAS: Denise is going to say something  
5 about the Davis case.

6 MS. BRADSHAW: Okay.

7 MS. BARTON: Good afternoon, Madam Chair and  
8 members of the Board. My name is Denise Barton. I'm  
9 representing the Board here, and I'm from the Attorney  
10 General's office. I just wanted to give you a status update  
11 on the litigation that was filed by Robert Davis against the  
12 Board of State Canvassers. Actually the reason why I was in  
13 the hallway was because there was a phone conference on the  
14 latest status, which there will be a hearing on March 30th  
15 in front of Federal Judge Levy, at which time Mr. Davis has  
16 sued the Board of State Canvassers and also the Wayne County  
17 Election Commission in connection with the constitutionality  
18 of the recall statute -- Michigan's recall statute.

19 Mr. Davis' attorney wanted to have the Board  
20 members testify at that hearing and the judge, at least on  
21 the record, indicated that she's not inclined to order that  
22 at this time, and that Mr. Thomas actually will be there.  
23 And so we have filed our response. We have filed our  
24 response, and we will keep you posted. Thank you.

25 MS. BRADSHAW: Thank you very much. Is there any

1 other business? I'll entertain a motion to adjourn.

2 MR. SHINKLE: So moved.

3 MS. BRADSHAW: We are adjourned. Thank you very  
4 much.

5 (Meeting concluded at 3:47 p.m.)

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