

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Court of Appeals No. 354270

Plaintiff-Appellant,

Court of Claims No. 20-000125-MM

v

BOARD OF STATE CANVASSERS,

Defendant-Appellee.

**The appeal involves a ruling
that a provision of the
Constitution, a statute, rule or
regulation, or other State
governmental action is invalid.**

BRIEF OF APPELLEE BOARD OF STATE CANVASSERS

APPENDIX

- A. Slip Opinion April 4, 2020
- B. Preliminary Staff Report May 19, 2020
- C. Petition Sheets
- D. Staff Report June 3, 2020
- E. BSC Minutes June 8, 2020
- F. MI Supreme Court Complaint
- G. MI Supreme Court Order July 2, 2020
- H. Court of Claims Complaint and Motion for Preliminary Injunction
- I. Court of Claims Opinion and Order July 20, 2020
- J. Initiatives Referendums
- K. OAG 2019-2020, #7310, May 22, 2019

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EXHIBIT A

Comm. to Ban Fracking in Mich. & Luanne Kozma v. Sec'y of State

Court of Appeals of Michigan

April 2, 2020, Decided

No. 350161

Reporter

2020 Mich. App. LEXIS 2563 *

COMMITTEE TO BAN FRACKING IN MICHIGAN and
LUANNE KOZMA, Plaintiffs-Appellants, v SECRETARY
OF STATE, DIRECTOR OF ELECTIONS, and BOARD
OF STATE CANVASSERS, Defendants-Appellees.

Notice: THIS IS AN UNPUBLISHED OPINION. IN
ACCORDANCE WITH MICHIGAN COURT OF
APPEALS RULES, UNPUBLISHED OPINIONS ARE
NOT PRECEDENTIALLY BINDING UNDER THE
RULES OF STARE DECISIS.

Prior History: [*1] Court of Claims. LC No. 18-000274-
MM.

Judges: Before: CAMERON, P.J., and SHAPIRO and
LETICA, JJ.

Opinion

PER CURIAM.

Plaintiffs appeal the Court of Claims order granting summary disposition to defendants under MCR 2.116(C)(10) (no genuine issue of material fact). For the reasons stated in this opinion, we reverse and remand to the Secretary of State to forward plaintiffs' petition to the Board of State Canvassers.

I.

Plaintiff Committee to Ban Fracking in Michigan is engaged in a statutory initiative campaign to ban horizontal hydraulic fracturing, which is commonly known as "fracking." Plaintiff LuAnne Kozma is the director of that campaign. In April 2015, the Board approved the form of plaintiffs' initiative petition. The front-page summary of the proposed legislation provided that "[t]his proposal is to be voted on in the November 8, 2016 General Election." No date of election was provided in the full language of the petition's text.

Plaintiffs began circulating their petition for signatures in May 2015. At the time, MCL 168.472a provided a rebuttable presumption that signatures on a petition made 180 days before filing would not count.¹ 180 days after they had begun circulation, plaintiffs had collected approximately 150,000 signatures. [*2] The number of valid signatures to achieve ballot status was 252,523 signatures.

In January 2016, plaintiffs filed a complaint seeking to challenge the constitutionality of the 180-day rule under former MCL 168.472a. The Court of Claims granted defendants summary disposition, holding that no actual controversy existed because plaintiffs had not collected enough signatures to submit their petition to the Secretary and their ability to do so was speculative. Plaintiffs appealed that ruling, and we affirmed. *Comm to Ban Fracking in Mich v Dir of Elections*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 334480), pp 2-4.

Plaintiffs continued to collect signatures and on November 5, 2018—the day before the 2018 election—plaintiffs sought to file the initiative petition with the

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Secretary for a vote, if necessary, in the 2020 election. According to plaintiffs, they had collected about 270,962 signatures. However, the Director of Elections refused to accept the petition because the front-page summary stated that it was to be voted on at the November 8, 2016 general election and that election had already passed. Plaintiffs filed a complaint in this Court seeking [*3] a writ of mandamus requiring the Director to accept their legislative initiative petition. We denied the complaint. *Comm to Ban Fracking in Mich v Secretary of State*, unpublished order of the Court of Appeals, entered November 15, 2018 (Docket No. 346280).²

In December 2018, plaintiffs filed the instant complaint, challenging the Secretary's action in several respects including a claim that the Secretary had usurped the power of the Board, which is the only entity charged by statute with determining the sufficiency and adequacy of an initiative petition. Plaintiffs also alleged that the petition did not violate MCL 168.471, which provides that petitions must be filed at least 160 days before the election at which the proposal would be voted on. Defendants moved for summary disposition, arguing that inclusion of the incorrect election date was a defect that rendered plaintiffs' petition invalid and untimely. According to defendants, MCL 168.471 contemplates that the petition's sponsor will designate the general election in which the sponsor sought to have the proposed legislation voted upon.

In its opinion and order, the Court of Claims found that even though there is no statutory requirement that initiative [*4] petitions include an expected election date, the erroneous date resulted in a violation of MCL 168.471. The proposed legislation was to be voted on in the November 2016 general election, an election as to which the 160-day cutoff had long passed at the time of petition's filing. Accordingly, the Court of Claims granted defendants summary disposition.

We reverse because we agree with plaintiffs that the petition did not violate the 160-day rule. Given our ruling, we need not address whether the Secretary acted outside of her authority by rejecting the petition or any of the other issues raised on appeal.³

² In the present action, the Court of Claims requested that the parties brief whether the doctrine of res judicata barred the action. Specifically, the trial court asked whether the Court of Appeals' order denying mandamus relief was a final judgment. Both plaintiffs and defendants stated that this Court's order did not decide the issue on the merits.

II.

We review de novo a lower court's decision on a motion for summary disposition. See *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A party is entitled to summary disposition if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." MCR 2.116(C)(10). We also review de novo questions involving the interpretation and application of statutes. *Linden v Citizens Ins Co of America*, 308 Mich App 89, 91-92; 862 NW2d 438 (2014).

III.

The Michigan Constitution provides that "[t]he 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." [*5] 1963 Const, art 2, § 9. To invoke the power of initiative, petitions must be signed by registered voters amounting to not less than 8% of the total vote cast for all candidates for governor in the preceding election for governor. 1963 Const, art 2, § 9. The Legislature is required to enact or reject the initiative within 40 session days of when the initiative is received. Const 1963, art 2, § 9. "The legislature shall implement the provisions of this section." Const 1963, art 2, § 9. "Constitutional and statutory initiative and referendum provisions should be liberally construed to effectuate their purposes, to facilitate rather than hamper the exercise by the people of these reserved rights." *Newsome v Riley*, 69 Mich App 725, 729; 245 NW2d 374 (1976).

The Court of Claims erred in concluding that the inclusion of an expected election date in the summary meant that the initiative could only be voted on that date. This was legal error because it is statutory law, not the circulator's intent, that determines when an initiative is to be voted on. MCL 168.471 states in relevant part that initiative petitions "must be filed with the secretary of state at least 160 days *before the election at which the proposed law would appear on the ballot if the legislature rejects or fails to enact the proposed law.*"

³ Plaintiffs raised several other issues in their complaint. They asserted that the 180-day limit on signature gathering is unconstitutional, that the Secretary's actions violated equal protection and that the Secretary was estopped from refusing to accept the petition because of statements defendants made in the prior action before the Court of Claims. The Court of Claims did not address the 180-day rule, but ruled in defendants' favor on the other claims.

(Emphasis added). Given that initiative [*6] petitions are not required to state the election at which the proposed law will appear, we fail to see why the reference to an already-passed election should be the date from which the 160-day period is calculated. By statute, the petition may not be voted on in an election less than 160 days away, and so, whatever the petitioner's intent, the relevant election date is the next one that is at least 160 days away.⁴

Regardless of any representation by plaintiffs, because the petition was filed on November 5, 2018—one day before the November 2018 election—the November 2020 is the election that the proposed law would appear on if not approved by the Legislature. That is clear from a review of the timing requirements governing initiative petitions. Upon receiving notification from the Secretary, the Board canvasses the petition and the supporting signatures, MCL 168.476(1), and "meets to make a final determination on challenges to and sufficiency of a petition," MCL 168.476(3). The Board is required to do so at least two months before "the election at which the proposal is to be submitted." MCL 168.477(1), as amended by 2012 PA 276.⁵ The Legislature must act on an initiative petition within 40 session days. Const 1963, art 2, § 9. Thus, the statute and constitutional [*7] provisions governing initiative petitions establish that for a petition filed on November 5, 2018, the election at which the proposed law would appear on the ballot if the Legislature rejected or failed to enact the petition was the November 2020 election. Accordingly, compliance 160-day rule in this case is measured from the November 2020 election. Plaintiffs satisfied that part of MCL 168.471 because the petition was filed at least 160 days before that election.⁶

⁴This does not entitle a petitioner to collect signatures indefinitely because signatures obtained prior to the general election preceding the filing are void. See MCL 168.473b.

⁵MCL 168.477 now provides that this period is 100 days for initiative petitions.

⁶In addition, MCL 168.473b does not preclude plaintiffs' petition from appearing on the November 2020 ballot. That statute provides that "[s]ignatures on a petition . . . to initiate legislation collected prior to a November general election at which a governor is elected shall not be filed after the date of that November general election." MCL 168.473b requires that signatures on a petition to initiate legislation be filed before the upcoming general election, but it does not state that those signatures become invalid after that election. Nor does it require that the petition be voted in the upcoming general election if not acted on by the Legislature. And plaintiffs

On remand, the Secretary shall accept the petition for filing and forward it to the Board for canvassing as required by the statute.⁷ Further, we agree with plaintiffs that the Court of Claims erred in finding that the petition was not filed on November 5, 2018. Plaintiffs tendered their petition for filing, and even assuming the Secretary had the authority to reject it, the basis for doing so was erroneous. Because the Director wrongly refused to accept the filing, the petition must be treated as having been filed on that day. To hold otherwise would punish petition sponsors and the electorate for unlawful actions taken by election officials. Thus, the petition must be treated as having been filed on November 5, 2018.

IV.

In sum, plaintiffs submitted an initiative petition that was facially compliant with all statutory requirements. The Secretary was required to pass it on to the Board for the Board to determine the validity of the petition and canvass the signatures. If the Board rejects the petition, plaintiff may seek review before the Supreme Court. See MCL 168.479.

Reversed and remanded to the Secretary for further proceedings consistent with this opinion. We do not retain jurisdiction.

complied with this statutory section by filing their petition on November 5, 2018, one day before the upcoming gubernatorial election.

⁷It is the Board's responsibility to make an official declaration regarding the adequacy and sufficiency of the petition. MCL 168.477(1). It is also the Board's duty to approve the summary of the proposed amendment's purpose, MCL 168.482b, which is where the alleged defect in this case is located. "In essence, the Board ascertains whether sufficient valid signatures support the petition *and whether the* [*8] *petition is in the proper form.*" *Citizens Protecting Michigan's Constitution v Secretary of State*, 324 Mich App 561, 585; 922 NW2d 404 (2018), *aff'd* 503 Mich 42 (2018) (emphasis added). The Board in fact routinely determines whether the form of a petition complied with the Legislature's requirements. See e.g., *Council About Parochialism v Secretary of State*, 403 Mich 396, 397; 270 NW2d 1 (1978) (Board determined that the petitioner complied with statutory form requirements when descriptive material was attached to the petitions during circulation); *Stand Up for Democracy v Secretary of State*, 297 Mich App 45, 55; 824 NW2d 220 (2012), *rev'd* 492 Mich 588 (2012) (Board rejected a petition that did not comply with statutory font requirements); *Auto Club of Mich Comm for Lower Rates Now v Secretary of State*, 195 Mich App 613, 624; 491 NW2d 269 (1992) (Board determined that a tear sheet did not comply with statutory form requirements).

/s/ Thomas C. Cameron

/s/ Douglas B. Shapiro

/s/ Anica Letica

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EXHIBIT B



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

May 19, 2020

**Committee to Ban Fracking in Michigan
Initiative Petition**

PRELIMINARY STAFF REPORT

SPONSOR: Committee to Ban Fracking in Michigan, P.O. Box 490, Charlevoix, Michigan 49720.

DATE OF FILING: May 1, 2020, but pursuant to the April 2, 2020 order of the Court of Appeals, the petition is deemed filed on November 5, 2018. *Committee to Ban Fracking v Sec of State*, unpublished opinion of the Court of Appeals, Dkt. No. 350161.

NUMBER OF VALID SIGNATURES REQUIRED: 252,523 signatures, the minimum signature threshold that was in effect on November 5, 2018.

Under MCL 168.472a, all of the signatures must have been gathered within 180 days of the date the petition was deemed filed: “The signature on a petition that proposes an amendment to the constitution or is to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state.”

TOTAL FILING: Estimated by the petition sponsor to contain 270,962 signatures on 51,980 petition sheets, “collected over a 3½-year period[.]”¹ The sponsor also claims, “[a]t most, 65,000 signatures were collected in the 180 days prior to November 5, 2018. They can be found in the last of the numbered boxes.”² When delivering the signatures on May 1, the petition sponsor informed Bureau staff that these signatures were in the last 7 boxes (boxes 41 through 47).

METHODOLOGY: Staff counted every signature on every petition sheet in numbered boxes 41 through 47 (10,480 sheets).

The majority of signatures in boxes 43 through 47 were non-stale signatures dated within 180 days of the November 5, 2018 filing date (i.e., were signed on or after May 9, 2018); boxes 41 and 42 did not include any signatures gathered within the 180-day period (i.e., all were stale, dated on or before May 8, 2018).

Staff ceased the count after box 41 was completed and based on the sponsor’s representations, believe every signature that was dated within 180 days of the deemed filing date has been

¹ May 1, 2020 letter addressed to the Director of Elections and Secretary of State, p.3. A copy is attached to this preliminary staff report.

² *Id.*

accounted for. Note, however, that none of the petition sheets or signatures have been face reviewed or sampled, meaning the numbers below represent the ceiling of potentially valid signatures within the filing—assuming, again, that the petition sponsor’s representation that all non-stale signatures are in the last 7 boxes is accurate.

Number of signatures filed within 180 days: 29,392 signatures have been confirmed by staff as being dated within 180 days of the November 5, 2018 filing date.³

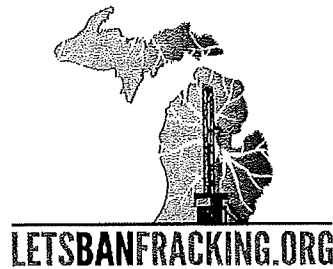
Remainder of signatures: Staff has not confirmed the total number of signatures in the entire filing, but subtracting the known number of signatures gathered within 180 days (29,392) from the sponsor’s estimate of the total number of signatures filed (270,962), it appears there are 241,570 signatures collected more than 180 days prior to the November 5, 2018 filing date.

ESTIMATED NUMBER OF VALID SIGNATURES ON PETITION: No more than 29,392 signatures.

STAFF RECOMMENATION: Based on MCL 168.472a and staff’s review of the petition, staff recommends that the Board certify that the petition contains an insufficient number of valid signatures to qualify for placement on the ballot.⁴

³ Boxes 41 through 47 also contained 19,534 stale signatures, or signatures dated on or before May 8, 2018. In total, boxes 41 through 47 contain 48,926 signatures (19,534 stale + 29,392 non-stale).

⁴ The Bureau has not completed a face review or sample of all estimated 270,962 signatures. Therefore, this staff report does not include the number of signatures that would, setting aside the 180-day issue, otherwise be valid.



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May 1, 2020

TO: Jonathan Brater, Director of Elections, Jocelyn Benson, Secretary of State, and Board of State Canvassers

FROM: LuAnne Kozma, Campaign Director, Committee to Ban Fracking in Michigan
LuAnne Kozma

This letter accompanies our in-person delivery on this day of 47 boxes of petitions for the Committee to Ban Fracking in Michigan's statutory initiative, containing approximately 51,980 sheets and approximately 270,962 signatures, as filed properly and timely on November 5, 2018.

I attest that they are the same boxes, sheets and signatures we brought to the SOS office in 2018. They have been kept in a records management company for the past 17 months at the Committee's expense. We have not disturbed the petitions after they were put into storage. The chain of custody was with me until deposited and stored with Kent Records Management on November 8, 2018 through May 1, 2020, removed by me on May 1, 2020 and now delivered to the SOS office on the same day.

The Committee's petitions were the subject of litigation, *Committee to Ban Fracking in Michigan v Secretary of State* after the refusal by the Director of Elections and Secretary of State to accept possession of the petitions on November 5, 2018. As per the Michigan Court of Appeals decision of April 2, 2020:

"On remand, the Secretary shall accept the petition for filing and forward it to the Board for canvassing as required by the statute [MCL 168.477(1)]. Further, we agree with plaintiffs [the Committee] that the Court of Claims erred in finding that the petition was not filed on November 5, 2018. Plaintiffs tendered their petition for filing, and even assuming the Secretary had the authority to reject it, the basis for

Committee to Ban Fracking in Michigan
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doing so was erroneous. Because the Director wrongly refused to accept the filing, the petition must be treated as having been filed on that day. To hold otherwise would punish petition sponsors and the electorate for unlawful actions taken by election officials. Thus, the petition must be treated as having been filed on November 5, 2018. [Emphasis added]

In sum, plaintiffs submitted an initiative petition that was facially compliant with all statutory requirements. The Secretary was required to pass it on to the Board for the Board to determine the validity of the petition and canvass the signatures. If the Board rejects the petition, plaintiff may seek review before the Supreme Court. See MCL 168.479.”

Our delivery of the petitions was delayed since then, due to actions by the SOS/DOE/Canvassers:

On April 2, the Committee’s counsel wrote to the AG counsel to make arrangements to bring in the petitions. The AG counsel refused delivery.

Late on Friday, April 17 the AG’s counsel notified our legal counsel to make arrangements to bring the signatures in.

On April 20 I called Mr. Brater’s office and did not hear back.

On April 23 we received confirmation from the AG’s counsel that the State would not seek leave to appeal.

On April 23 I called Mr. Brater again and sent a follow up email, trying to arrange delivery and to discuss the Canvassers’ meeting.

On April 24, Mr. Brater replied and confirmed my request for delivery on May 4.

On April 29, I contacted Mr. Brater to arrange for earlier delivery on May 1.

On April 30, Mr. Brater confirmed delivery for May 1 and arranged for staff member Carol Pierce to be present to accept the delivery. He also provided a modified Petition Filing Receipt to acknowledge the Court of Appeals order

to accept the Committee's petitions as filed on November 5, 2018, noting 252,523 was the minimum number of valid signatures required on that date.

Sufficiency of Signatures and Challenge of MCL 168.472a

With our submission, we are now contesting the constitutionality of MCL 168.472a. This statute now eliminates and disqualifies *perfectly valid signatures* by Michigan registered voters that meet the criteria set forth in the constitution.

The number of signatures required for statutory initiative is determined by the Michigan Constitution in Article 2 Section 9, which states: "*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.*"

Certainly any signatures obtained during the period between the November 4, 2014 and November 6, 2018 gubernatorial elections would meet the constitutional criteria. The Constitution gives no other constraints as to what signatures during this period would not meet the criteria. Furthermore, this constitutional section has been found by the courts to be *self-executing*.

The number of signatures required by the Constitution for statutory initiatives submitted between the 2014 and 2018 gubernatorial elections was 252,523.

It is the Committee's contention, therefore, that not counting signatures outside of a 180-day time period prior to filing imposed by MCL 168.472a directly violates the plain language of the right the People have reserved to themselves to invoke the statutory initiative set forth in Article 2 Section 9.

I will repeat what the Committee said at page 15 of our opening brief to the appellate court, citing to ¶¶ 13, 20, 28 of my affidavit: "The signatures were collected over a 3½-year period, necessitating a ruling that 472a is unconstitutional in order for them to be canvassed." At most, 65,000 signatures were collected in the 180 days prior to November 5, 2018. They can be found in the last of the numbered boxes.

As we will show in the Supreme Court on appeal of the Canvassers' decision, all of the Committee's 270,962 signatures should be considered as potentially valid signatures meeting the constitutional requirement.

We understand that the Board of State Canvassers is not a court, and has no power to rule on the constitutionality of statutes.

Committee to Ban Fracking Expects Election Officials to Expedite Staff Review, Scheduling of Canvassers meeting, and Canvassers' Determination of Insufficiency to Accommodate Tight Timeline for Placement on 2020 Ballot.

The Committee to Ban Fracking in Michigan has every right to expect the process from this point forward to be expedited to allow for our proposal to be on the 2020 ballot.

Given that the Secretary of State and Director of Elections unlawfully denied the Committee's signatures and delayed the process for 17 months in litigation, and given the Committee to Ban Fracking filed its signatures well over the 253,523 requirement in order for them to be considered, *two full years prior* to the 2020 election, and given that the timeline is now tight for the Committee's proposal to be on the 2020 ballot, accordingly we expect that the SOS staff will expedite their recommendation to the Canvassers without sampling the signatures, that the Canvassers also will expedite the scheduling of its meeting, to determine the Committee's petition signatures as insufficient, at which point (as the Court of Appeals said in section IV) the Committee would seek review in the Supreme Court.

"Activities necessary to manage and oversee elections" are deemed "necessary government activities" in Governor's Executive Order No. 2020-59 dated April 24, 2020. The Canvassers can and has met virtually on April 30. There are no reasons to delay the staff report or the Canvassers' meeting.

The foregoing is consistent with the June 7, 2016 staff review, two days later acted on by the Canvassers, of the petition filed that June 1 by Michigan Comprehensive Cannabis Law Reform, and we expect the same timely treatment, with a staff report by May 7 and a Canvassers' meeting the next day:

[https://www.michigan.gov/documents/sos/Staff_Report -
Cannabis Law Reform 526211 7.pdf](https://www.michigan.gov/documents/sos/Staff_Report_-_Cannabis_Law_Reform_526211_7.pdf)

Because we filed on November 5, 2018, we expect priority over candidate petition filings and other initiative petition filings that took place after the Committee to Ban Fracking's.

To not expedite the staff review and Canvassers' meeting would delay our litigation, and further punish the Committee as petition sponsor and the electorate by threatening the Committee's and the voters' rights to have the proposal on the 2020 ballot. The Court will also expedite its proceedings. Even if something outside of the election officials' control delays us getting on the ballot in 2020 (i.e. extended Supreme Court deliberation), then the bottom line will be punishment of the electorate, because this would not be an issue if the signatures were not refused a year a half ago, or if the Canvassers had acted, or if the new administration had reversed course and not fought our case. The roadblocks the State has put before the Committee to Ban Fracking have had the intended consequences of disrupting and delaying this campaign. The People of Michigan deserve better.

My comments supersede any comments made by our attorney Ellis Boal at the April 30, 2020 Canvassers meeting to the contrary.

Enclosures:

Correspondence from Sally Williams, Director of Elections, dated November 5, 2018, rejecting the Committee to Ban Fracking in Michigan's petitions.

Michigan Court of Appeals decision, April 2, 2020, *Committee to Ban Fracking in Michigan v Secretary of State*, COA case # 350161, Court of Claims LC No. 18-000274-MM.



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

November 5, 2018

TO WHOM IT MAY CONCERN:

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

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

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

Sally Williams

STATE OF MICHIGAN
COURT OF APPEALS

COMMITTEE TO BAN FRACKING IN
MICHIGAN and LUANNE KOZMA,

UNPUBLISHED
April 2, 2020

Plaintiffs-Appellants,

v

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

No. 350161
Court of Claims
LC No. 18-000274-MM

Defendants-Appellees.

Before: CAMERON, P.J., and SHAPIRO and LETICA, JJ.

PER CURIAM.

Plaintiffs appeal the Court of Claims order granting summary disposition to defendants under MCR 2.116(C)(10) (no genuine issue of material fact). For the reasons stated in this opinion, we reverse and remand to the Secretary of State to forward plaintiffs' petition to the Board of State Canvassers.

I.

Plaintiff Committee to Ban Fracking in Michigan is engaged in a statutory initiative campaign to ban horizontal hydraulic fracturing, which is commonly known as "fracking." Plaintiff LuAnne Kozma is the director of that campaign. In April 2015, the Board approved the form of plaintiffs' initiative petition. The front-page summary of the proposed legislation provided that "[t]his proposal is to be voted on in the November 8, 2016 General Election." No date of election was provided in the full language of the petition's text.

Plaintiffs began circulating their petition for signatures in May 2015. At the time, MCL 168.472a provided a rebuttable presumption that signatures on a petition made 180 days before

filing would not count.¹ 180 days after they had begun circulation, plaintiffs had collected approximately 150,000 signatures. The number of valid signatures to achieve ballot status was 252,523 signatures.

In January 2016, plaintiffs filed a complaint seeking to challenge the constitutionality of the 180-day rule under former MCL 168.472a. The Court of Claims granted defendants summary disposition, holding that no actual controversy existed because plaintiffs had not collected enough signatures to submit their petition to the Secretary and their ability to do so was speculative. Plaintiffs appealed that ruling, and we affirmed. *Comm to Ban Fracking in Mich v Dir of Elections*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 334480), pp 2-4.

Plaintiffs continued to collect signatures and on November 5, 2018—the day before the 2018 election—plaintiffs sought to file the initiative petition with the Secretary for a vote, if necessary, in the 2020 election. According to plaintiffs, they had collected about 270,962 signatures. However, the Director of Elections refused to accept the petition because the front-page summary stated that it was to be voted on at the November 8, 2016 general election and that election had already passed. Plaintiffs filed a complaint in this Court seeking a writ of mandamus requiring the Director to accept their legislative initiative petition. We denied the complaint. *Comm to Ban Fracking in Mich v Secretary of State*, unpublished order of the Court of Appeals, entered November 15, 2018 (Docket No. 346280).²

In December 2018, plaintiffs filed the instant complaint, challenging the Secretary's action in several respects including a claim that the Secretary had usurped the power of the Board, which is the only entity charged by statute with determining the sufficiency and adequacy of an initiative petition. Plaintiffs also alleged that the petition did not violate MCL 168.471, which provides that petitions must be filed at least 160 days before the election at which the proposal would be voted on. Defendants moved for summary disposition, arguing that inclusion of the incorrect election date was a defect that rendered plaintiffs' petition invalid and untimely. According to defendants, MCL 168.471 contemplates that the petition's sponsor will designate the general election in which the sponsor sought to have the proposed legislation voted upon.

In its opinion and order, the Court of Claims found that even though there is no statutory requirement that initiative petitions include an expected election date, the erroneous date resulted in a violation of MCL 168.471. The proposed legislation was to be voted on in the November

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² In the present action, the Court of Claims requested that the parties brief whether the doctrine of res judicata barred the action. Specifically, the trial court asked whether the Court of Appeals' order denying mandamus relief was a final judgment. Both plaintiffs and defendants stated that this Court's order did not decide the issue on the merits.

2016 general election, an election as to which the 160-day cutoff had long passed at the time of petition's filing. Accordingly, the Court of Claims granted defendants summary disposition.

We reverse because we agree with plaintiffs that the petition did not violate the 160-day rule. Given our ruling, we need not address whether the Secretary acted outside of her authority by rejecting the petition or any of the other issues raised on appeal.³

II.

We review de novo a lower court's decision on a motion for summary disposition. See *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A party is entitled to summary disposition if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." MCR 2.116(C)(10). We also review de novo questions involving the interpretation and application of statutes. *Linden v Citizens Ins Co of America*, 308 Mich App 89, 91-92; 862 NW2d 438 (2014).

III.

The Michigan Constitution provides that "[t]he 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." 1963 Const, art 2, § 9. To invoke the power of initiative, petitions must be signed by registered voters amounting to not less than 8% of the total vote cast for all candidates for governor in the preceding election for governor. 1963 Const, art 2, § 9. The Legislature is required to enact or reject the initiative within 40 session days of when the initiative is received. Const 1963, art 2, § 9. "The legislature shall implement the provisions of this section." Const 1963, art 2, § 9. "Constitutional and statutory initiative and referendum provisions should be liberally construed to effectuate their purposes, to facilitate rather than hamper the exercise by the people of these reserved rights." *Newsome v Riley*, 69 Mich App 725, 729; 245 NW2d 374 (1976).

The Court of Claims erred in concluding that the inclusion of an expected election date in the summary meant that the initiative could only be voted on that date. This was legal error because it is statutory law, not the circulator's intent, that determines when an initiative is to be voted on. MCL 168.471 states in relevant part that initiative petitions "must be filed with the secretary of state at least 160 days *before the election at which the proposed law would appear on the ballot if the legislature rejects or fails to enact the proposed law.*" (Emphasis added). Given that initiative petitions are not required to state the election at which the proposed law will appear, we fail to see why the reference to an already-passed election should be the date from which the

³ Plaintiffs raised several other issues in their complaint. They asserted that the 180-day limit on signature gathering is unconstitutional, that the Secretary's actions violated equal protection and that the Secretary was estopped from refusing to accept the petition because of statements defendants made in the prior action before the Court of Claims. The Court of Claims did not address the 180-day rule, but ruled in defendants' favor on the other claims.

160-day period is calculated. By statute, the petition may not be voted on in an election less than 160 days away, and so, whatever the petitioner's intent, the relevant election date is the next one that is at least 160 days away.⁴

Regardless of any representation by plaintiffs, because the petition was filed on November 5, 2018—one day before the November 2018 election—the November 2020 is the election that the proposed law would appear on if not approved by the Legislature. That is clear from a review of the timing requirements governing initiative petitions. Upon receiving notification from the Secretary, the Board canvasses the petition and the supporting signatures, MCL 168.476(1), and “meets to make a final determination on challenges to and sufficiency of a petition,” MCL 168.476(3). The Board is required to do so at least two months before “the election at which the proposal is to be submitted.” MCL 168.477(1), as amended by 2012 PA 276.⁵ The Legislature must act on an initiative petition within 40 session days. Const 1963, art 2, § 9. Thus, the statute and constitutional provisions governing initiative petitions establish that for a petition filed on November 5, 2018, the election at which the proposed law would appear on the ballot if the Legislature rejected or failed to enact the petition was the November 2020 election. Accordingly, compliance 160-day rule in this case is measured from the November 2020 election. Plaintiffs satisfied that part of MCL 168.471 because the petition was filed at least 160 days before that election.⁶

On remand, the Secretary shall accept the petition for filing and forward it to the Board for canvassing as required by the statute.⁷ Further, we agree with plaintiffs that the Court of Claims

⁴ This does not entitle a petitioner to collect signatures indefinitely because signatures obtained prior to the general election preceding the filing are void. See MCL 168.473b.

⁵ MCL 168.477 now provides that this period is 100 days for initiative petitions.

⁶ In addition, MCL 168.473b does not preclude plaintiffs' petition from appearing on the November 2020 ballot. That statute provides that “[s]ignatures on a petition . . . to initiate legislation collected prior to a November general election at which a governor is elected shall not be filed after the date of that November general election.” MCL 168.473b requires that signatures on a petition to initiate legislation be filed before the upcoming general election, but it does not state that those signatures become invalid after that election. Nor does it require that the petition be voted in the upcoming general election if not acted on by the Legislature. And plaintiffs complied with this statutory section by filing their petition on November 5, 2018, one day before the upcoming gubernatorial election.

⁷ It is the Board's responsibility to make an official declaration regarding the adequacy and sufficiency of the petition. MCL 168.477(1). It is also the Board's duty to approve the summary of the proposed amendment's purpose, MCL 168.482b, which is where the alleged defect in this case is located. “In essence, the Board ascertains whether sufficient valid signatures support the petition *and whether the petition is in the proper form.*” *Citizens Protecting Michigan's Constitution v Secretary of State*, 324 Mich App 561, 585; 922 NW2d 404 (2018), aff'd 503 Mich 42 (2018) (emphasis added). The Board in fact routinely determines whether the form of a petition complied with the Legislature's requirements. See e.g., *Council About Parochiaid v Secretary of*

erred in finding that the petition was not filed on November 5, 2018. Plaintiffs tendered their petition for filing, and even assuming the Secretary had the authority to reject it, the basis for doing so was erroneous. Because the Director wrongly refused to accept the filing, the petition must be treated as having been filed on that day. To hold otherwise would punish petition sponsors and the electorate for unlawful actions taken by election officials. Thus, the petition must be treated as having been filed on November 5, 2018.

IV.

In sum, plaintiffs submitted an initiative petition that was facially compliant with all statutory requirements. The Secretary was required to pass it on to the Board for the Board to determine the validity of the petition and canvass the signatures. If the Board rejects the petition, plaintiff may seek review before the Supreme Court. See MCL 168.479.

Reversed and remanded to the Secretary for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron
/s/ Douglas B. Shapiro
/s/ Anica Letica

State, 403 Mich 396, 397; 270 NW2d 1 (1978) (Board determined that the petitioner complied with statutory form requirements when descriptive material was attached to the petitions during circulation); *Stand Up for Democracy v Secretary of State*, 297 Mich App 45, 55; 824 NW2d 220 (2012), rev'd 492 Mich 588 (2012) (Board rejected a petition that did not comply with statutory font requirements); *Auto Club of Mich Comm for Lower Rates Now v Secretary of State*, 195 Mich App 613, 624; 491 NW2d 269 (1992) (Board determined that a tear sheet did not comply with statutory form requirements).

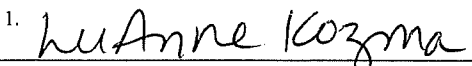

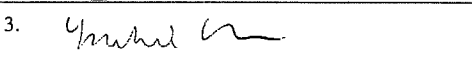
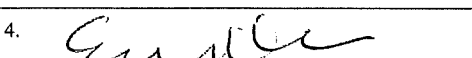
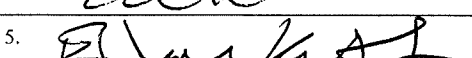
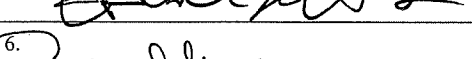
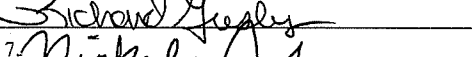
EXHIBIT C

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 Charlevoix, State of Michigan, respectively petition for initiation of legislation.

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

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					MO	DAY	YEAR
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> Hayes	1. 	LuAnne Kozma	9330 Woods Road	49720	2	29	16
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/> Hayes	2. 	Ellis Bow	9330 Woods Rd	49720	2	29	16
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/> Bay	3. 	Rachel Cross	02661 Camp Sherwood Rd	49712	3	4	16
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/> Hayes	4. 	Evan Keller	8354 Pindrop Rd	49720	3	4	16
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> Boyne	5. 	Ethan Kist	321 Freeman Rd	49712	3	13	16
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> HAYES	6. 	RICHARD Grosberg	09134 BURGESS RD	49720	3	26	16
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/> South Arm	7. 	Nickole Johnson	6791 Behling Rd.	49727	3	26	16
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	8.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	9.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	10.						

CERTIFICATE OF CIRCULATOR


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

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

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

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

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



(Signature of Circulator)

3, 31, 16

(Date)

Ellis Bow

(Printed Name of Circulator)

9330 Woods Rd

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

Hayes MI 49720

(City or Township, State, Zip Code)

(County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan)

RECEIVED by MCOA 9

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.

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INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					MO	DAY	YEAR
CITY OF <input checked="" type="checkbox"/> HAYES	1. LuAnne Kozma	LuAnne Kozma	9330 Woods Road	49720	5	22	15
CITY OF <input type="checkbox"/> DAY	2. Seth Borgeld	Seth Borgeld	03582 Camp Sherwood Rd	49712	5	22	15
CITY OF <input checked="" type="checkbox"/> CHANDLER	3. Myke Sherman	Myke Sherman	00535 MAQUEE	49713	5	22	15
CITY OF <input checked="" type="checkbox"/> MELROSE	4. Tyler Swannor	Tyler Swannor	03458 Springvale rd	49713	5	22	15
CITY OF <input checked="" type="checkbox"/> SOUTHWARM	5. Nichole Moblo	Nichole Moblo	5656 Waterman Rd	49727	5	22	15
CITY OF <input checked="" type="checkbox"/> CHARLEVOIX	6. Kayla Moblo	Kayla Moblo	637 Petoskey Ave APT B205	49720	5	22	15
CITY OF <input checked="" type="checkbox"/> CHARLEVOIX	7. Pam Kantola	Pam KANTOLA	5605 BONAR DR CHX	49720	5	22	15
CITY OF <input checked="" type="checkbox"/> CHARLEVOIX	8. Roberta S Gluck	Roberta S Gluck	12465 Country Club Dr.	49720	5	23	15
CITY OF <input checked="" type="checkbox"/> NORWOOD	9. Carolyn Navarre	Carolyn Navarre	04225 Lake Shore Dr	49720	5	23	15
CITY OF <input checked="" type="checkbox"/> CHARLEVOIX	10. Julianne Fialkowski	Julianne Fialkowski	12290 N. Country Club Dr	49720	5	23	15

CERTIFICATE OF CIRCULATOR

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

LuAnne Kozma
(Signature of Circulator)

5, 23, 15
(Date)

LuAnne Kozma
(Printed Name of Circulator)

9330 Woods Road
(Complete Residence Address (Street and Number or Rural Route)) Do not enter a post office box

Charlevoix, MI 49720
(City or Township, State, Zip Code)

(County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan)

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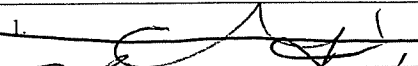
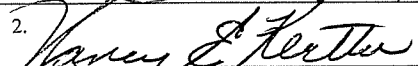
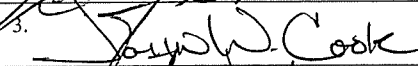
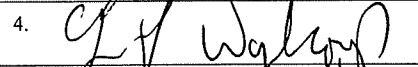
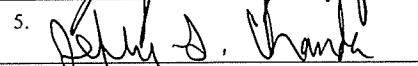
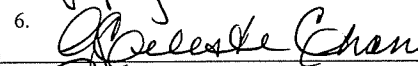
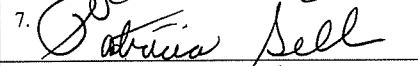
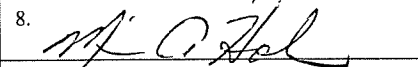
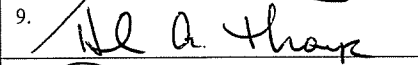
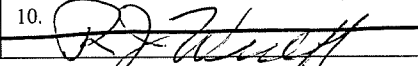
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INITIATION OF LEGISLATION

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.

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INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					MO	DAY	YEAR
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> Hayes		Ellis Beal	9330 Woods Rd	49720	5	22	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> EVE LINE		NANCY E. KERTTU	8425 FERRY Rd	49727	5	22	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> SOUTH ARM		John Cook	5656 WATERMAN RD	49727	5	22	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> South Arm		Leif Wynkoop	5656 Waterman Rd	49727	5	22	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> CHARLEVOIX		JEFFREY CHANDA	06327 OLD US 31 SOUTH	49720	5	22	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> Charlevoix		C. Celeste Chanda	06327 Old US 31 S.	49720	5	22	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> CHARLEVOIX		PATRICIA SELL	8765 CARSON	49720	5	22	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> Evangeline		Miriam A. Holler	4326 Ellis	49712	5	23	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> Eveline		Helen A. Thompson	06508 Loomis Rd	49727	5	23	15
CITY OF <input checked="" type="checkbox"/> TOWNSHIP OF <input checked="" type="checkbox"/> Boyne City		R.J. WOLFF	6150 N LAKE ST	49712	5	23	15

CERTIFICATE OF CIRCULATOR

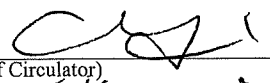
The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has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

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



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


(Signature of Circulator)

5, 26, 15
(Date)

Ellis Beal
(Printed Name of Circulator)

9330 Woods Rd
(Complete Residence Address (Street and Number or Rural Route)) Do not enter a post office box

Hayes MI 49720
(City or Township, State, Zip Code)

(County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan)

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EXHIBIT D



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

UPDATED June 3, 2020

**Committee to Ban Fracking in Michigan
Initiative Petition**

PRELIMINARY STAFF REPORT

SPONSOR: Committee to Ban Fracking in Michigan, P.O. Box 490, Charlevoix, Michigan 49720.

DATE OF FILING: May 1, 2020, but pursuant to the April 2, 2020 order of the Court of Appeals, the petition is deemed filed on November 5, 2018. *Committee to Ban Fracking v Sec of State*, unpublished opinion of the Court of Appeals, Dkt. No. 350161.

NUMBER OF VALID SIGNATURES REQUIRED: 252,523 signatures, the minimum signature threshold that was in effect on November 5, 2018.

Under MCL 168.472a, all of the signatures must have been gathered within 180 days of the date the petition was deemed filed: “The signature on a petition that proposes an amendment to the constitution or is to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state.”

TOTAL FILING: Estimated by the petition sponsor to contain 270,962 signatures on 51,980 petition sheets, “collected over a 3½-year period[.]”¹ The sponsor also claims, “[a]t most, 65,000 signatures were collected in the 180 days prior to November 5, 2018. They can be found in the last of the numbered boxes.”² When delivering the signatures on May 1, the petition sponsor informed Bureau staff that these signatures were in the last 7 boxes (boxes 41 through 47).

Update: At its meeting on Friday, May 22, 2020, the Board of State Canvassers directed staff to conduct a thorough count of every petition sheet and signature within the filing. The staff count was performed between Saturday, May 23 and Monday, June 1, and confirms the following:

52,015 petition sheets

271,021 signatures

METHODOLOGY: Staff counted every signature on every petition sheet in numbered boxes 41 through 47 (10,480 sheets).

¹ May 1, 2020 letter addressed to the Director of Elections and Secretary of State, p.3 (attached).

² *Id.*

The majority of signatures in boxes 43 through 47 were non-stale signatures dated within 180 days of the November 5, 2018 filing date (i.e., were signed on or after May 9, 2018); boxes 41 and 42 did not include any signatures gathered within the 180-day period (i.e., all were stale, dated on or before May 8, 2018).

Staff ceased the count after box 41 was completed and based on the sponsor's representations, believe every signature that was dated within 180 days of the deemed filing date has been accounted for. Note, however, that none of the petition sheets or signatures have been face reviewed or sampled, meaning the numbers below represent the ceiling of potentially valid signatures within the filing—assuming, again, that the petition sponsor's representation that all non-stale signatures are in the last 7 boxes is accurate.

Number of signatures filed within 180 days: 29,392 signatures have been confirmed by staff as being dated within 180 days of the November 5, 2018 filing date.³

Remainder of signatures – Update: 241,629 signatures have been confirmed by staff as collected more than 180 days prior to the November 5, 2018 filing date.

ESTIMATED NUMBER OF VALID SIGNATURES ON PETITION: No more than 29,392 signatures.

STAFF RECOMMENATION: Based on MCL 168.472a and staff's review of the petition, staff recommends that the Board certify that the petition contains an insufficient number of valid signatures to qualify for placement on the ballot.⁴

³ Boxes 41 through 47 also contained 19,534 stale signatures, or signatures dated on or before May 8, 2018. In total, boxes 41 through 47 contain 48,926 signatures (19,534 stale + 29,392 non-stale).

⁴ The Bureau has not completed a face review or sample of all 271,021 signatures. Therefore, this staff report does not include the number of signatures that would, setting aside the 180-day issue, otherwise be valid.

EXHIBIT E



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

**Meeting
of the
Board of State Canvassers**

**June 8, 2020
(Held Remotely)**

Called to order: 10:01 a.m.

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

Members absent: None.

Agenda item: Consideration of meeting minutes for approval (May 29, 2020).

Board action on agenda item: The Board approved the minutes of the May 29, 2020 meeting as submitted. Moved by Shinkle; supported by Matuzak. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

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

Board action on agenda item: The Board certified that the initiative petition sponsored by the Committee to Ban Fracking in Michigan contains an insufficient number of valid signatures to qualify for placement on the ballot. Moved by Matuzak; supported by Van Langevelde. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the City of Eastpointe's request to use the Universal RCV Tabulator v. 1.0.1 for the purpose of tabulating votes in the special election to fill a vacancy in the office of City Councilmember, which will be held in conjunction with the November 3, 2020 election.

Board action on agenda item: The Board approved the use of the Universal RCV Tabulator v. 1.0.1 for the limited purpose of filling a

vacancy in the office of Eastpointe City Councilmember at the November 3, 2020 election. Moved by Shinkle; supported by Matuzak. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

Agenda item:

Consideration of the recall petition submitted on May 27, 2020 against Governor Gretchen Whitmer by James Makowski. The reasons for recall printed in the heading of the petition are as follows:

Gretchen Whitmer, by issuing Executive Order 2020-09, "Temporary restrictions on the use of places of public accommodation," and extending said restrictions through Executive Orders 2020-21, 2020-43, 2020-70, 2020-92 and 2020-96 has forced the closure of Michigan businesses, contributing to a seasonally adjusted jobless rate in April of 22.7 percent. This monthly jump of 18.4 percentage points has resulted in Michigan's jobless rate growing 8.0 percent above the U.S. national unemployment rate growth of 10.3%.

Board action on agenda item: The Board determined that the recall petition filed by James Makowski on May 27, 2020 does not factually and clearly state each reason for the recall of Governor Gretchen Whitmer because it contains subjective statements regarding unemployment and closure of businesses. Moved by Matuzak; supported by Shinkle. Ayes: Bradshaw, Matuzak, Shinkle. Nays: Van Langevelde. Motion carried.

Agenda item:

Consideration of the recall petition submitted on May 29, 2020 against Governor Gretchen Whitmer by Chad Baase. The reasons for recall printed in the heading of the petition are as follows:

For signing Executive Order 2020-04, Declaration of State of Emergency, on March 10, 2020; For signing Executive Order 2020-17, Temporary restrictions on non-essential medical and dental procedures, on March 20, 2020; For signing Executive Order 2020-21, Temporary requirement to suspend activities that are not necessary to sustain or protect life, on March 23, 2020; For signing Executive Order 2020-32, Temporary restrictions on non-essential veterinary services, on March 30, 2020; For signing Executive Order 2020-33, Expanded emergency and disaster declaration, on April 1, 2020; For signing Executive Order 2020-42, Temporary requirement to suspend activities that are not necessary to sustain or protect life – Rescission of Executive Order 2020-21, on April 9, 2020; For signing Executive Order 2020-67, Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302, on April 30, 2020; For Signing Executive Order 2020-68, Declaration of states of emergency and disaster under the Emergency Management Act, 1976 PA 390, on April 30, 2020; For signing Executive Order 2020-92, Temporary requirement to suspend certain activities that are not necessary to

sustain or protect life Rescission of Executive Orders 2020-77 and 2020-90, on May 18, 2020.

Board action on agenda item: The Board determined that the recall petition filed by Chad Baase on May 29, 2020 factually and clearly states each reason for the recall of Governor Gretchen Whitmer because it simply repeats dates and numbers of nine Executive Orders signed by the Governor. Moved by Shinkle; supported by Van Langevelde. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the recall petition submitted on May 26, 2020 against Attorney General Dana Nessel by Chad Baase. The reasons for recall printed in the heading of the petition are as follows:

For signing and sending a letter with the greeting, "Dear Colleagues," dated May 4, 2020, Re: Executive Orders 2020-69 & 2020-70 with the following paragraph within its text; "The legislature has deemed this to be a "sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster." MCL 10.32. In addition, the provisions of the EPGA are to "be broadly construed to effectuate this purpose." The full contents of the letter signed by DANA NESSEL may be found at https://www.michigan.gov/documents/ag/Ltr_re_EO_69_70.final_689490_7.pdf.

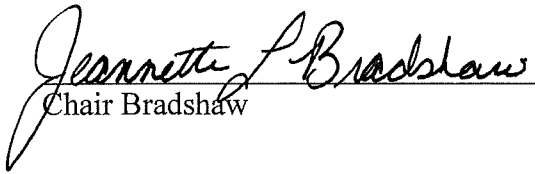
Board action on agenda item: The Board determined that the recall petition filed by Chad Baase on May 26, 2020 does not factually and clearly state each reason for the recall of Attorney General Dana Nessel because it lacks clarity, includes a URL and contains confusing grammar. Moved by Matuzak; supported by Van Langevelde. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

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

Consideration of a petition to form a new political party submitted by the Socialist Party of Michigan, 400 Bagley Street No. 939, Detroit, Michigan 48226.

Board action on agenda item: The Board approved the form of the new political party petition form submitted by the Socialist Party of Michigan. Moved by Matuzak; supported by Shinkle. Ayes: Bradshaw, Van Langevelde, Matuzak, Shinkle. Nays: None. Motion carried.

Adjourned: 11:16 a.m.


Chair Bradshaw

Member Matuzak

June 18, 2020
Date


Vice-Chair Van Langevelde

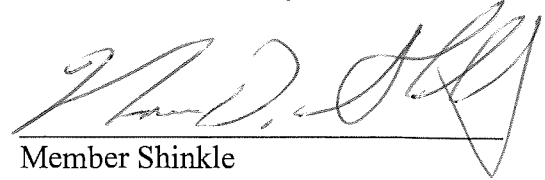

Member Shinkle

EXHIBIT F

STATE OF MICHIGAN
SUPREME COURT

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Plaintiff,

v

Case # _____

BOARD OF STATE CANVASSERS,

Defendant.

_____/

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**COMPLAINT FOR REVIEW OF BOARD OF STATE CANVASSERS
DETERMINATION UNDER MCL 168.479**

Oral argument requested

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INTRODUCTION

1. Plaintiff Committee to Ban Fracking in Michigan (“the Committee”) brings this complaint under MCL 168.479, seeking review of the June 8, 2020 decision of the Board of State Canvassers (“the Canvassers”) declaring the number of countable signatures on the Committee’s statutory initiative petition to be insufficient under Const 1963 art 2, § 9.

2. In its opinion of April 2, 2020¹ (discussed below), the Court of Appeals noted MCL 168.479 to be the proper procedural avenue for review of the Canvassers’ determination.

PARTIES AND JURISDICTION

3. Plaintiff Committee to Ban Fracking in Michigan (CBFM) is a ballot question committee² properly formed under the laws of the State of Michigan and headquartered in Charlevoix. Through the efforts of over 950 volunteers from 60 Michigan counties, it has collected and filed over 271,000 petition signatures from Michigan voters for a statutory initiative under Const 1963 art, 2, § 9.

4. Defendant Board of State Canvassers is a state board established pursuant to Const 1963, art 2, § 7. Among other duties, the Board is responsible for issuing a

1 Exhibit A: *Comm to Ban Fracking in Mich v Secretary of State*, unpublished per curiam opinion of the Court of Appeals, issued April 2, 2020 (Docket No. 350161), 2020 Mich. App. LEXIS 2563.

2 MCL 169.202(3).

declaration of sufficiency or insufficiency for a statutory initiative petition under Const 1963 art 2, § 9.³

5. This Court has original jurisdiction over an action challenging a determination of the Canvassers, filed within seven days after the Canvassers' determination, pursuant to MCL 168.479.

GENERAL ALLEGATIONS

6. On November 5, 2018, the Committee filed 271,021 vetted statutory initiative signatures with the Secretary of State, expecting she would notify the Canvassers per the election statute.⁴ The figure was 7% more than the minimum of 252,523 required at the time by the Constitution.⁵ Upon conducting a staff review of the petition, the Bureau concluded that only about 29,392 of the signatures were collected within 180 days preceding the date of filing.⁶ According to MCL 168.472a, this meant only the 29,392 are available to be canvassed, far fewer than the minimum.⁷

7. The Canvassers consequently declared the Committee's filing insufficient

3 MCL 168.477(1).

4 MCL 168.475(1).

5 Const 1963 art 2, § 9.

6 Exhibit B: Mich Dep't of State, Bureau of Elections, *Committee to Ban Fracking in Michigan Preliminary Staff Report* (Updated June 3, 2020).

7 The Bureau's staff report improperly describes the remaining signatures as "stale," reflecting 472a's former language which provided that signatures older than 180 days were rebuttably presumed to be stale and void. Under 472a's present language, as amended by 2016 PA 142, such signatures are irrebuttably barred from being counted.

without conducting a sample or direct canvass. However, should this Court hold 472a unconstitutional, then all 271,021 signatures would be sampled and canvassed, and this matter would be remanded for the Canvassers to start the work.

COUNT 1 — MANDAMUS OR OTHER APPROPRIATE REMEDY PURSUANT TO MCL 168.479

I. MCL 168.472A IS UNCONSTITUTIONAL AS APPLIED TO STATUTORY INITIATIVES UNDER CONST 1963, ART 2, § 9.

7. The statutory initiative procedure of Const 1963, art 2, § 9⁸ is a self-executing constitutional provision which, under *Wolverine Golf Club v Secretary of State*,⁹ grants the legislature no authority to impose additional restrictions on the time periods for circulation and signing. MCL 168.472a provides:

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

8. In 1974, a year after 472a's original enactment, the Michigan Attorney General issued OAG 4813,¹⁰ which concluded that the statute's 180-day restriction violated the Michigan Constitution as applied to both constitutional and statutory initiatives. The Attorney General's reasoning was different for each type, as statutory initiatives are governed by Const 1963, art 2, § 9, whereas initiatives to

8 "The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative...."

9 384 Mich 461 (1971).

10 Exhibit C: OAG No. 4813 (August 13, 1974).

amend the constitution are governed by Const 1963, art 12 § 2.

9. 472a was enacted originally in 1973. According to contemporaneous media accounts, the political background was a constitutional initiative of the “Legislative Salary Amendment Committee,” which proposed to cut lawmakers' salaries.¹¹

10. As to statutory initiatives, the Attorney General observed and opined:

This provision [art 2, § 9] has been held to be self-executing. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466; 185 NW2d 392 (1971). Although that provision concludes with language to the effect that the legislature should implement the provisions thereof, such language has been given a very limited construction by the Michigan Supreme Court, which held that this provision is merely “a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate.” I am consequently of the opinion that, as applied to signatures affixed to petitions which initiate legislation pursuant to Const 1963 art 2, § 9, § 472a of the Michigan Election law is beyond the legislature's power to implement said section and is therefore unconstitutional and unenforceable.

11. *Wolverine Golf Club* fully underscores the Attorney General's reasoning and conclusion. There, this Court affirmed a decision of the Court of Appeals which had ordered the Canvassers “forthwith” to accept initiatory petitions “for canvass” and immediate submission to the Legislature, though the petitions violated the 10-day timing provision of MCL 168.472. The reason: MCL 168.472

11 Exhibit D: (Kenyon, *Housewife Seeks Cut in Legislators' Pay*, Battle Creek Enquirer (March 24, 1972), p 6; News-Palladium, *New Bill Eases Petition Rules*, News-Palladium (July 26 1973), p 10; Times Herald, *Kelley Rules Petition Drive Time Limits Unconstitutional*, Times Herald (August 14, 1974), p 10).

was not a “constitutionally permissible implementation” of art 2, § 9:

We do not regard this statute as an implementation of the provision of Const. 1963 art. 2, § 9. We read the stricture of that section, “the *legislature shall implement* the provisions of this section,” as a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or electorate. This constitutional procedure is *self-executing*. . . . It is *settled law* that the legislature may not act to impose additional obligations on a self-executing constitutional provision.¹²

12. OAG 4813 bound the Bureau of Elections for many years thereafter.

During that time, numerous ballot petitions were undoubtedly filed in good faith with signatures that had been gathered more than 180 days before.¹³

A. *Consumers Power Co* is Inapplicable to Statutory Initiatives under Const 1963, art 2, § 9.

13. In 1986, this Court affirmed a declaratory judgment finding MCL 168.472a, as then worded, valid as applied to constitutional initiative petitions, thus overruling OAG 4813 as applied to that type of initiative.¹⁴

14. At the time, and until 2016,¹⁵ 472a stated:

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

15. However, despite the considerable care taken by this Court, the Court

12 384 Mich at 466, emphasis added.

13 *Line v State*, 173 Mich App 720, 724 (1988).

14 *Consumers Power Co v Attorney General*, 426 Mich 1 (1986).

15 The intervening amendment of 1999 PA 219 changed the word “which” to “that” and the word “it” to “the signature.”

of Appeals, and the parties to limit the scope of that decision to only constitutional initiatives under art 12 § 2, the Bureau of Elections and the Canvassers have since operated from the unfounded position that *Consumers Power Co* upheld the validity of MCL 168.472a in *toto*.

16. In acknowledging that *Consumers Power Co* did not address OAG 4813's conclusion as to 472a's restriction of statutory initiative petitions, then-serving State Elections Director Christopher Thomas grounded such a stance entirely on the bureaucratically-intuited "feeling that if it's good for one, it's good for the other."¹⁶

17. Contrary to the Bureau of Elections' feeling drawn from that decision, *Consumers Power Co* turned entirely on the language of a distinct, single-sentence provision of Const 1963, art 12 § 2:

Any such petition shall be in the form, and shall be *signed and circulated* in such manner, as prescribed by law.¹⁷

18. Noting the "extreme importance" of the sentence just quoted, this Court found that the text of art 12 § 2 serves to explicitly "summon legislative aide . . . in the areas of circulation and signing."¹⁸ Accordingly, *Consumers Power Co* not only relied on such summoning language to distinguish art 12, § 2 from its

16 Exhibit E: Board of State Canvassers Meeting Transcript (March 24, 2016), pp 24-25.

17 Emphasis added.

18 *Consumers Power Co*, 426 Mich at 6, 9.

1908 constitutional predecessor reviewed in *Hamilton v Secretary of State*,¹⁹ but also expressly declared such language to be the very basis of “authorization for the Legislature to have enacted MCL 168.472a.”²⁰

19. While art 12 § 2 thus “clearly authorizes the Legislature to prescribe by law for the manner of signing and circulating petitions *to propose constitutional amendments*,”²¹ art 2, § 9 contains no similar authorizing language for statutory initiatives.²² Rather, the only form of legislative implementation contemplated by art 2, § 9, as to statutory initiatives, has been found by this Court to be limited solely to the process by which the proposed legislation of a successfully petitioned initiative shall reach the legislature and electorate.²³

20. Just as the “absence of a call for legislative action in Const 1908, art 17, § 2” underpinned *Consumers Power Co*’s harmony with *Hamilton*, the equivalent absence of such a call under Const 1963, 2, § 9 underpins *Consumer*

19 221 Mich 541 (1923).

20 426 Mich at 9.

21 *Id.* at 6 (emphasis added).

22 By further notable comparison, the separate provision of art 2, § 9 governing referendum invocation does set forth a time limit for conducting the invocation petition process, even despite that provision’s distinctly non-self-executing status. See *id.* (“The power of referendum . . . 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.*”) (emphasis added). Hence, the framers’ omission of any similarly set time-limit for the process of invoking statutory initiative petitions under the same section must be construed as intentional.

23 *Wolverine Golf Club*, 384 Mich at 466.

Power Co's harmony with *Wolverine Golf Club*. Indeed, such a dissimilar absence of legislative regulatory authorization under art 2, § 9's is fully accordant with that section's distinct purpose as "a reservation of legislative authority which serves as a limitation on the powers of the Legislature."²⁴

B. MCL 168.472a, as Amended by 2016 PA 142, Curtails the Constitutional Right of Initiative.

21. "In cases where a provision is self-executing," any supplementary legislation "must be in harmony with the spirit of the Constitution and its object to further the exercise of constitutional right and make it more available, and such laws must not curtail the rights reserved, or exceed the limitations specified."

Wolverine Golf Club v Secretary of State, 24 Mich App 711, 730 (1970), aff'd 384 Mich 461 (1971).

22. Having reviewed the version of 472a existing prior to the amendment of 2016 PA 142, *Consumers Power Co* had predicated its holding on the fact that:

The purpose of the statute is to fulfill the constitutional directive of art. 12 sec. 2 that only the registered electors of this state may propose a constitutional amendment. The statute does not set a 180-day time limit for obtaining signatures. The statute itself *establishes no such time limit*. It states rather that if a signature is affixed to a petition more than 180 days before the petition is filed it is presumed to be stale and void. But that presumption can be rebutted.²⁵

23. But the 2016 amendment removed the rebuttable presumption.

24 *Woodland v Citizens Lobby*, 423 Mich 188, 215 (1985); see also *Kuhn v Dep't of Treasury*, 384 Mich 378, 385 n 10 (1971).

25 426 Mich at 8 (emphasis added).

Instead, even valid signatures--those of registered electors as established by the qualified voter file²⁶ in effect on the date of a signature--'shall not be counted' if they were collected more than 180 days before the petition filing.

24. Consequently, 472a now imposes precisely the form of curtailment of which *Consumers Power* found that the statute stopped short, even as applied to constitutional amendatory initiatives.

25. In removing the word “stale” from the statutory language as amended by 2016 PA 42, the Legislature has shown that 472a is not intended to ensure the continued registration of petition signers, but rather only to heighten the burden of invoking a citizens’ initiative.²⁷

26. Given that the absolute time limit now imposed on circulating statutory initiative petitions incontestably operates “to impose additional obligations on” the process set forth by art 2, § 9,²⁸ the foundation for upholding OAG 4813’s undisturbed finding as to 472a’s infringement of statutory initiative

26 MCL 168.509o.

27 Indeed, in the Governor’s press release announcing his signing of the amendatory bill enacted as 2016 PA 142, the Governor asserted no objective related to the voter registration status of petition signers, but rather attributed it the purpose of “help[ing] ensure the issues that make the ballot are the ones that matter most to Michiganders.” See Office of Governor Rick Snyder, *Gov. Rick Snyder Signs Bill Establishing 180-day Deadline for Petition Signatures on Proposed Legislation and Constitutional Amendments* (published June 7, 2016) < http://michigan.gov/snyder/0,4668,7-277-57577_57657-386394--,00.html > (accessed today).

28 *Wolverine Golf Club*, 384 Mich at 466.

rights is all the more firmly grounded today. The logic of OAG 4813 remains compelling and dispositive.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court declare MCL 168.472a unconstitutional and enter a writ of mandamus or other appropriate order directing the Board of State Canvassers to:

- 1) Canvass Plaintiff's statutory initiative petition without exclusion of those signatures dated more than 180 days from the petition's date of filing and
- 2) Issue a declaration of sufficiency or insufficiency for Plaintiff's petition by the statutory deadline of July 26, 2020.²⁹

Respectfully submitted,

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Dated: June 10, 2020

²⁹ MCL 168.477(1).

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Exhibit A

Comm. to Ban Fracking in Mich. & Luanne Kozma v. Sec'y of State

Court of Appeals of Michigan

April 2, 2020, Decided

No. 350161

Reporter

2020 Mich. App. LEXIS 2563 *

COMMITTEE TO BAN FRACKING IN MICHIGAN and LUANNE KOZMA, Plaintiffs-Appellants, v SECRETARY OF STATE, DIRECTOR OF ELECTIONS, and BOARD OF STATE CANVASSERS, Defendants-Appellees.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: [*1] Court of Claims. LC No. 18-000274-MM.

Judges: Before: CAMERON, P.J., and SHAPIRO and LETICA, JJ.

Opinion

PER CURIAM.

Plaintiffs appeal the Court of Claims order granting summary disposition to defendants under [MCR 2.116\(C\)\(10\)](#) (no genuine issue of material fact). For the reasons stated in this opinion, we reverse and remand to the Secretary of State to forward plaintiffs' petition to the Board of State Canvassers.

I.

Plaintiff Committee to Ban Fracking in Michigan is engaged in a statutory initiative campaign to ban horizontal hydraulic fracturing, which is commonly known as "fracking." Plaintiff LuAnne Kozma is the director of that campaign. In April 2015, the Board approved the form of plaintiffs' initiative petition. The front-page summary of the proposed legislation provided that "[t]his proposal is to be voted on in the November 8, 2016 General Election." No date of election was provided in the full language of the petition's text.

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Plaintiffs began circulating their petition for signatures in May 2015. At the time, [MCL 168.472a](#) provided a rebuttable presumption that signatures on a petition made 180 days before filing would not count.¹ 180 days after they had begun circulation, plaintiffs had collected approximately 150,000 signatures. [*2] The number of valid signatures to achieve ballot status was 252,523 signatures.

In January 2016, plaintiffs filed a complaint seeking to challenge the constitutionality of the 180-day rule under former [MCL 168.472a](#). The Court of Claims granted defendants summary disposition, holding that no actual controversy existed because plaintiffs had not collected enough signatures to submit their petition to the Secretary and their ability to do so was speculative. Plaintiffs appealed that ruling, and we affirmed. *Comm to Ban Fracking in Mich v Dir of Elections*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 334480), pp 2-4.

Plaintiffs continued to collect signatures and on November 5, 2018—the day before the 2018 election—plaintiffs sought to file the initiative petition with the Secretary for a vote, if necessary, in the 2020 election. According to plaintiffs, they had collected about 270,962 signatures. However, the Director of Elections refused to accept the petition because the front-page summary stated that it was to be voted on at the November 8, 2016 general election and that election had already passed. Plaintiffs filed a complaint in this Court seeking [*3] a writ of mandamus requiring the Director to accept their legislative initiative petition. We denied the complaint. *Comm to Ban Fracking in Mich v Secretary of State*, unpublished order of the Court of Appeals, entered November 15, 2018 (Docket No. 346280).²

In December 2018, plaintiffs filed the instant complaint, challenging the Secretary's action in several respects including a claim that the Secretary had usurped the power of the Board, which is the only entity charged by statute with determining the sufficiency and adequacy of an initiative petition. Plaintiffs also alleged that the petition did not violate [MCL 168.471](#), which provides that petitions must be filed at least 160 days before the election at which the proposal would be voted on. Defendants moved for summary disposition, arguing that inclusion of the incorrect election date was a defect that rendered plaintiffs' petition invalid and untimely. According to defendants, [MCL 168.471](#) contemplates that the petition's sponsor will designate the general election in which the sponsor sought to have the proposed legislation voted upon.

In its opinion and order, the Court of Claims found that even though there is no statutory requirement that initiative [*4] petitions include an expected election date, the erroneous date resulted in a violation of [MCL 168.471](#). The proposed legislation was to be voted on in the November 2016 general election, an election as to which the 160-day cutoff had long passed at the time of petition's filing. Accordingly, the Court of Claims granted defendants summary disposition.

We reverse because we agree with plaintiffs that the petition did not violate the 160-day rule. Given our ruling, we need not address whether the Secretary acted outside of her authority by rejecting the petition or any of the other issues raised on appeal.³

II.

¹ Effective June 7, 2016, [MCL 168.472a](#) was amended to remove the rebuttable presumption and now provides that signatures that are more than 180 days old "shall not be counted[.]" 2016 PA 142.

² In the present action, the Court of Claims requested that the parties brief whether the doctrine of res judicata barred the action. Specifically, the trial court asked whether the Court of Appeals' order denying mandamus relief was a final judgment. Both plaintiffs and defendants stated that this Court's order did not decide the issue on the merits.

³ Plaintiffs raised several other issues in their complaint. They asserted that the 180-day limit on signature gathering is unconstitutional, that the Secretary's actions violated equal protection and that the Secretary was estopped from refusing to accept the petition because of statements defendants made in the prior action before the Court of Claims. The Court of Claims did not address the 180-day rule, but ruled in defendants' favor on the other claims.

We review de novo a lower court's decision on a motion for summary disposition. See [Maiden v Rozwood](#), 461 Mich 109, 118; 597 NW2d 817 (1999). A party is entitled to summary disposition if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." [MCR 2.116\(C\)\(10\)](#). We also review de novo questions involving the interpretation and application of statutes. [Linden v Citizens Ins Co of America](#), 308 Mich App 89, 91-92; 862 NW2d 438 (2014).

III.

The Michigan Constitution provides that "[t]he 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." [*5] [1963 Const, art 2, § 9](#). To invoke the power of initiative, petitions must be signed by registered voters amounting to not less than 8% of the total vote cast for all candidates for governor in the preceding election for governor. [1963 Const, art 2, § 9](#). The Legislature is required to enact or reject the initiative within 40 session days of when the initiative is received. [Const 1963, art 2, § 9](#). "The legislature shall implement the provisions of this section." [Const 1963, art 2, § 9](#). "Constitutional and statutory initiative and referendum provisions should be liberally construed to effectuate their purposes, to facilitate rather than hamper the exercise by the people of these reserved rights." [Newsome v Riley](#), 69 Mich App 725, 729; 245 NW2d 374 (1976).

The Court of Claims erred in concluding that the inclusion of an expected election date in the summary meant that the initiative could only be voted on that date. This was legal error because it is statutory law, not the circulator's intent, that determines when an initiative is to be voted on. [MCL 168.471](#) states in relevant part that initiative petitions "must be filed with the secretary of state at least 160 days before the election at which the proposed law would appear on the ballot if the legislature rejects or fails to enact the proposed law." (Emphasis added). Given that initiative [*6] petitions are not required to state the election at which the proposed law will appear, we fail to see why the reference to an already-passed election should be the date from which the 160-day period is calculated. By statute, the petition may not be voted on in an election less than 160 days away, and so, whatever the petitioner's intent, the relevant election date is the next one that is at least 160 days away.⁴

Regardless of any representation by plaintiffs, because the petition was filed on November 5, 2018—one day before the November 2018 election—the November 2020 is the election that the proposed law would appear on if not approved by the Legislature. That is clear from a review of the timing requirements governing initiative petitions. Upon receiving notification from the Secretary, the Board canvasses the petition and the supporting signatures, [MCL 168.476\(1\)](#), and "meets to make a final determination on challenges to and sufficiency of a petition," [MCL 168.476\(3\)](#). The Board is required to do so at least two months before "the election at which the proposal is to be submitted." [MCL 168.477\(1\)](#), as amended by 2012 PA 276.⁵ The Legislature must act on an initiative petition within 40 session days. [Const 1963, art 2, § 9](#). Thus, the statute and constitutional [*7] provisions governing initiative petitions establish that for a petition filed on November 5, 2018, the election at which the proposed law would appear on the ballot if the Legislature rejected or failed to enact the petition was the November 2020 election. Accordingly, compliance 160-day rule in this case is measured from the November 2020 election. Plaintiffs satisfied that part of [MCL 168.471](#) because the petition was filed at least 160 days before that election.⁶

⁴ This does not entitle a petitioner to collect signatures indefinitely because signatures obtained prior to the general election preceding the filing are void. See [MCL 168.473b](#).

⁵ [MCL 168.477](#) now provides that this period is 100 days for initiative petitions.

⁶ In addition, [MCL 168.473b](#) does not preclude plaintiffs' petition from appearing on the November 2020 ballot. That statute provides that "[s]ignatures on a petition . . . to initiate legislation collected prior to a November general election at which a governor is elected shall not be filed after the date of that November general election." [MCL 168.473b](#) requires that signatures on a petition to initiate legislation be filed before the upcoming general election, but it does not state that those signatures become invalid after that election. Nor does it require that the petition be voted in the upcoming general election if not acted on by the Legislature. And plaintiffs complied with this statutory section by filing their petition on November 5, 2018, one day before the upcoming gubernatorial election.

On remand, the Secretary shall accept the petition for filing and forward it to the Board for canvassing as required by the statute.⁷ Further, we agree with plaintiffs that the Court of Claims erred in finding that the petition was not filed on November 5, 2018. Plaintiffs tendered their petition for filing, and even assuming the Secretary had the authority to reject it, the basis for doing so was erroneous. Because the Director wrongly refused to accept the filing, the petition must be treated as having been filed on that day. To hold otherwise would punish petition sponsors and the electorate for unlawful actions taken by election officials. Thus, the petition must be treated as having been filed on November 5, 2018.

IV.

In sum, plaintiffs submitted an initiative petition that was facially compliant with all statutory requirements. The Secretary was required to pass it on to the Board for the Board to determine the validity of the petition and canvass the signatures. If the Board rejects the petition, plaintiff may seek review before the Supreme Court. See [MCL 168.479](#).

Reversed and remanded to the Secretary for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron

/s/ Douglas B. Shapiro

/s/ Anica Letica

End of Document

⁷ It is the Board's responsibility to make an official declaration regarding the adequacy and sufficiency of the petition. [MCL 168.477\(1\)](#). It is also the Board's duty to approve the summary of the proposed amendment's purpose, [MCL 168.482b](#), which is where the alleged defect in this case is located. "In essence, the Board ascertains whether sufficient valid signatures support the petition and whether the [*8] petition is in the proper form." [Citizens Protecting Michigan's Constitution v Secretary of State, 324 Mich App 561, 585; 922 NW2d 404 \(2018\)](#), aff'd [503 Mich 42 \(2018\)](#) (emphasis added). The Board in fact routinely determines whether the form of a petition complied with the Legislature's requirements. See e.g., [Council About Parochiaid v Secretary of State, 403 Mich 396, 397; 270 NW2d 1 \(1978\)](#) (Board determined that the petitioner complied with statutory form requirements when descriptive material was attached to the petitions during circulation); [Stand Up for Democracy v Secretary of State, 297 Mich App 45, 55; 824 NW2d 220 \(2012\)](#), rev'd [492 Mich 588 \(2012\)](#) (Board rejected a petition that did not comply with statutory font requirements); [Auto Club of Mich Comm for Lower Rates Now v Secretary of State, 195 Mich App 613, 624; 491 NW2d 269 \(1992\)](#) (Board determined that a tear sheet did not comply with statutory form requirements).

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Exhibit B



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

UPDATED June 3, 2020

**Committee to Ban Fracking in Michigan
Initiative Petition**

PRELIMINARY STAFF REPORT

SPONSOR: Committee to Ban Fracking in Michigan, P.O. Box 490, Charlevoix, Michigan 49720.

DATE OF FILING: May 1, 2020, but pursuant to the April 2, 2020 order of the Court of Appeals, the petition is deemed filed on November 5, 2018. *Committee to Ban Fracking v Sec of State*, unpublished opinion of the Court of Appeals, Dkt. No. 350161.

NUMBER OF VALID SIGNATURES REQUIRED: 252,523 signatures, the minimum signature threshold that was in effect on November 5, 2018.

Under MCL 168.472a, all of the signatures must have been gathered within 180 days of the date the petition was deemed filed: “The signature on a petition that proposes an amendment to the constitution or is to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state.”

TOTAL FILING: Estimated by the petition sponsor to contain 270,962 signatures on 51,980 petition sheets, “collected over a 3½-year period[.]”¹ The sponsor also claims, “[a]t most, 65,000 signatures were collected in the 180 days prior to November 5, 2018. They can be found in the last of the numbered boxes.”² When delivering the signatures on May 1, the petition sponsor informed Bureau staff that these signatures were in the last 7 boxes (boxes 41 through 47).

Update: At its meeting on Friday, May 22, 2020, the Board of State Canvassers directed staff to conduct a thorough count of every petition sheet and signature within the filing. The staff count was performed between Saturday, May 23 and Monday, June 1, and confirms the following:

52,015 petition sheets

271,021 signatures

METHODOLOGY: Staff counted every signature on every petition sheet in numbered boxes 41 through 47 (10,480 sheets).

¹ May 1, 2020 letter addressed to the Director of Elections and Secretary of State, p.3 (attached).

² *Id.*

The majority of signatures in boxes 43 through 47 were non-stale signatures dated within 180 days of the November 5, 2018 filing date (i.e., were signed on or after May 9, 2018); boxes 41 and 42 did not include any signatures gathered within the 180-day period (i.e., all were stale, dated on or before May 8, 2018).

Staff ceased the count after box 41 was completed and based on the sponsor's representations, believe every signature that was dated within 180 days of the deemed filing date has been accounted for. Note, however, that none of the petition sheets or signatures have been face reviewed or sampled, meaning the numbers below represent the ceiling of potentially valid signatures within the filing—assuming, again, that the petition sponsor's representation that all non-stale signatures are in the last 7 boxes is accurate.

Number of signatures filed within 180 days: 29,392 signatures have been confirmed by staff as being dated within 180 days of the November 5, 2018 filing date.³

Remainder of signatures – Update: 241,629 signatures have been confirmed by staff as collected more than 180 days prior to the November 5, 2018 filing date.

ESTIMATED NUMBER OF VALID SIGNATURES ON PETITION: No more than 29,392 signatures.

STAFF RECOMMENATION: Based on MCL 168.472a and staff's review of the petition, staff recommends that the Board certify that the petition contains an insufficient number of valid signatures to qualify for placement on the ballot.⁴

³ Boxes 41 through 47 also contained 19,534 stale signatures, or signatures dated on or before May 8, 2018. In total, boxes 41 through 47 contain 48,926 signatures (19,534 stale + 29,392 non-stale).

⁴ The Bureau has not completed a face review or sample of all 271,021 signatures. Therefore, this staff report does not include the number of signatures that would, setting aside the 180-day issue, otherwise be valid.

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Exhibit C

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

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

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

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

FRANK J. KELLEY,
Attorney General.

740813.1

CONSTITUTIONAL LAW: Amendments

CONSTITUTIONAL LAW: Initiative

ELECTIONS: Constitutional Amendment

ELECTIONS: Initiative

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

Opinion No. 4813

August 13, 1974.

Honorable Gary Byker
State Senator
The Capitol
Lansing, Michigan 48901

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

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

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

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

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

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

* * *

“The legislature shall implement the provisions of this section.”

This provision has been held to be self-executing. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466; 185 NW2d 392 (1971). Although that provision concludes with language to the effect that the legislature should implement the provisions thereof, such language has been given a very limited construction by the Michigan Supreme Court, which held that this provision is merely:

“. . . a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate. . . .” [*Wolverine Golf Club v Secretary of State*, *supra*, at 466]

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

FRANK J. KELLEY,
Attorney General.

740814.1

COUNTIES: Board of Health; Board of County Commissioners

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

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

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

Opinion No. 4825

August 14, 1974.

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

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

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Exhibit D

Housewife seeks cut in legislators' pay

By QUANE KENYON
GRAND RAPIDS (AP) — It's not an easy task to get an initiative proposal on the general election ballot — even if you think most of the voters would approve it if given the chance.

That's the problem facing Mrs. James B. Beckett of Grand Rapids, an energetic mother of five children who has launched a petition drive to lower and control the salaries of state legislators.

Mrs. Beckett, wife of a Grand Rapids attorney, is founder, chairwoman and chief spokeswoman for the Legislative Salary Amendment Committee.

According to the committee, Michigan legislators are among the highest paid in the nation with a \$17,000 annual salary and \$9,000 a year in fringe benefits.

The committee has proposed a constitutional amendment to cut the legislators' salaries to \$15,000 annually and require voter approval prior to any future salary increase.

Mrs. Beckett's biggest complaint is that under the 1963 State Constitution, legislators can get pay raises without the public being allowed to vote on them.

"The voters have to have some control," she said. "They are intelligent enough to make the right decisions."

Since last summer Mrs.



Mrs. James Beckett
... launched drive

Beckett has been running a shoestring campaign to get the required 350,000 valid signatures to put the proposed restrictions on the ballot.

The first 35,000 signatures haven't come easy. However, she said, "Voters have no apathy on this subject. They just need direction."

"There no question about it if this gets on the ballot this

November, it will get more votes than any other measure."

Her committee has had trouble getting support, Mrs. Beckett admitted, both actual and financial.

She said she "hoped to get 30,000 people" to help out, but, "We got 1,000."

The committee asked backers of the proposed amendment to send money. "We asked everyone to send \$1. That's what they sent — \$1 and no more," she said.

Her last financial report showed contributions of \$1,368.50. Much of that went to printing 52,000 copies of the petition.

Other roadblocks, the committee claimed, have been erected by shopping centers, postal service and fear of legislative reprisal.

Shopping centers are good places to collect signatures, but sometimes the operators won't let her group set up booths, Mrs. Beckett said.

Then there's the problem of the mails.

"I think we have lost 20 per cent of our mail because it has been incorrectly addressed," she said. That address, she added, is Post Office Box 1934, Grand Rapids.

Organized groups are slow to support her petition drive out of fear of reprisal from the legislature, Mrs. Beckett said. For the same reason, a local bank agreed to handle the money her committee collected only if it remained anonymous, she said.

"So far, we're right on schedule," she said. "Now we need to double our effort."

"It's a miracle that we've done so much with so little," Mrs. Beckett added.

Inn makes room for woman, beast

SUDBURY, Mass. (UPI) — The Wayside Inn, made famous by Henry Wadsworth Longfellow, has changed its slogan to adapt to women's liberation.

Francis J. Koppeis, innkeeper of the nonprofit inn and museum, said the slogan "Food and Lodging for Man and Beast," has been

er father?

appreciates these things. Talk it out with him and make sure you're on solid ground.

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PAGE TEN

THE NEWS-PALLADIUM, BENTON HARBOR, MICH.

New Bill Eases Petition Rules

LANSING, Mich. (AP)—The legislature has backed off a tight restriction it imposed earlier this year on collecting petition signatures, but probably not enough to satisfy a Grand Rapids housewife.

Lawmakers voted Wednesday to extend from 90 to 180 days the time allowed for collection of signatures on petitions seeking constitutional amendments or new legislation.

Signatures older than 180 days would not be valid.

The bill was sent to Gov.

William Milliken after it was passed in the Senate 29-0 and in the House 88-5.

The measure is a modified version of a bill passed about two months ago that allowed signatures to be only 90 days old. Milliken signed that bill, but extracted a promise from legislative leaders that they would write a new bill with the extended 180-day allowance.

There were no time restrictions prior to the legislative action and Mrs. Lee Beckett, a Grand Rapids mother of five,

interpreted the restriction as an attempt to kill her petition drive to cut lawmaker's salaries.

Mrs. Beckett has collected about 153,000 signatures since 1970 on petitions seeking reduction of legislative salaries from \$17,000 to \$15,000 a year. She also wants to abolish the State Officers Compensation Commission, which sets elected officials' salaries.

She hopes to collect about 150,000 more signatures to get the constitutional amendment on the November, 1974, ballot.

"You'd have to race like hell to get that number of signatures in 90 days," Mrs. Beckett said recently.

"Even 180 days is too short a period in which to collect 10 per cent of the total vote cast for governor. It's an attempt to limit our constitutional rights by law."

She said, "The limit infringes on the constitutional right to petition government for initiation of legislation or changes in our constitution." She is attempting to interest the American Civil Liberties Union in challenging the law.

A spokesman for Milliken said there is some doubt that Mrs. Beckett's petition drive would be halted by the new law, since she began collecting signatures long before the law was written.

Sen. Milton Zaagman, R-Grand Rapids, chairman of the Senate Municipalities and Elections Committee, supported the 180-day bill grudgingly.

"I think it is just yielding to pressure. I don't like it but if this commitment was made (to Milliken), I will keep it," he said Wednesday.

Zaagman said later, "There is

some pressure from possible public reaction. Mrs. Beckett is making statements that this reduces the ability to make constitutional changes."

Zaagman noted referendum petition signatures (for changing law) are good for only 90 days. "If it's good for a referendum, why isn't it good for initiative petitions?" he asked.

Former Canadian Leader Is Dead

OTTAWA (AP) — Louis St. Laurent, 91, prime minister of Canada from 1948 to 1957 and leader of the Liberal party, died Wednesday. One of Canada's leading constitutional authorities, St. Laurent served as a law professor at Laval University, president of the Canadian Bar Association in the 30s and leader of the Liberal party from 1948 to 1958.

Auto Sales Up 13 Per Cent

DETROIT (AP) — A sales surge by General Motors carried auto industry sales for the middle 10 days of July to a 13 per cent gain over the same period a year ago.

Sales figures released by the four largest domestic automakers revealed sales during the 10-day period totaled 310,431, compared to 274,272 sales during mid-July in 1972.

There were nine selling days in both of the 10-day periods.

GM recorded a 32 per cent

just before the mid-July selling period.

Ford had sales of 69,136 for the period, a 12 per cent drop from 78,544 sales the previous year. Chrysler's sales were down two per cent from 44,348 sales in mid-July 1972 to 43,355 this month.

Industry sales for the year totaled 5,739,966, a 13 per cent increase from 5,057,573 units sold during the same period in 1972.

GM showed a 15 per cent gain for the period, from 2,614,882 in 1972 to 2,996,887 so far this year. Ford was up nine per cent from 1,454,125 to 1,589,480 and Chrysler advanced 13 per cent from 819,512 to 925,337.

American Motors, however, has shown the largest sales gain, recording 228,262 sales so far this year—a 35 per cent increase over the 168,954 cars sold during the same period last year.

FREDRICK AP.

located in Coloma, a
across from Li

Kelley rules petition drive time limits unconstitutional

LANSING (AP) — Michigan citizens will have more time to collect signatures on petition drives under an opinion issued Tuesday by Atty. Gen. Frank Kelley.

Kelley ruled unconstitutional a 1973 law which required petition signatures be gathered within 180 days of the date they are filed. Kelley's opinion stands as law unless successfully challenged in court.

Kelley ruled signatures for petitions

seeking to change state law or the Michigan Constitution can be gathered over any period of time during the four years between gubernatorial elections. The number of required signatures is based on the number of votes in the governors race.

The decision apparently will have no effect on proposals appearing on the November ballot. However, the 180-day limit has affected petition drives which failed to meet the 180-day deadline.

Unsuccessful petition drives must begin anew after this November's gubernatorial vote, Kelley said, since that vote determines how many signatures are needed for the petition to be a success.

Petition drives begun after November will have four years to gather sufficient signatures.

The opinion was issued at the request of Sen. Gary Byker, R-Hudsonville, who asked for it on behalf of Lee Beckett, a Grand Rapids housewife conducting a petition drive to reduce legislative salaries. The drive did not acquire sufficient signatures this year to be filed with the secretary of state's office.

State Elections Director Bernard Apol said he did not have any petitions affected by the 180-day limitation, and said his office had never ruled any petition out because of the restriction.

The old law states signatures on petitions are "presumed to be stale and void" if gathered more than 180 days before filing. But Kelley said the law provided no indication of what proof might be used to overcome such a presumption.

Citing a previous Supreme Court decision, Kelley said that "petitions and the signatures affixed to them are valid for as long as a particular basis (vote cast) remains in effect...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."

GM denies suggestion price timing planned

DETROIT (AP) — Did General Motors time its announcement of record price increases for 1975 models so it would be obscured by the biggest news story of the decade?

The company denies it, but at least one newspaper columnist has suggested the firm purposely released the bad news of a 10 per cent price increase while the nation was watching a farewell speech from the first president to resign in U.S. history.

Pete Waldmeir of the Detroit News noted in Tuesday's editions that GM's public relations staff distributed announcement of the average \$500 price increase to the media at 9:30 a.m. Friday.

That was the time Richard Nixon was saying goodbye to his White House staff before national television, and only hours before President Ford was to be sworn in.

"The combination guaranteed that all other news stories, no matter how profound their impact on the people or the economy, would be buried deep inside the newspapers of the land," Waldmeir wrote.

He noted the story of GM's price hike appeared on an inside page of the third section in the News' afternoon edition Friday. Normally the story would rate a

Fewer strikes

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Exhibit E

BOARD OF STATE CANVASSERS MEETING

March 24, 2016

Prepared by



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

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

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

APPEARANCES:

For the State: MS. DENISE C. BARTON (P41535)
MR. ERIK GRILL (P64713)
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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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EXHIBIT G

Order

Michigan Supreme Court
Lansing, Michigan

July 2, 2020

Bridget M. McCormack,
Chief Justice

161453 & (4)(5)

David F. Viviano,
Chief Justice Pro Tem

COMMITTEE TO BAN FRACKING IN
MICHIGAN,
Plaintiff,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 161453

BOARD OF STATE CANVASSERS,
Defendant.

On order of the Court, the motion for immediate consideration is GRANTED. The complaint for mandamus is considered, and relief is DENIED, because the Court is not persuaded that it should grant the requested relief. The motion to dismiss is DENIED as moot.



b0630

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 2, 2020

Clerk

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EXHIBIT H

STATE OF MICHIGAN
COURT OF CLAIMS

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COURT OF CLAIMS

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Plaintiff,

Court of Claims # 20-000125-MM

v

Hon. Stephens

BOARD OF STATE CANVASSERS,

Defendant.

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

Matthew Erard (P81091)
LAW OFFICE OF
MATTHEW S. ERARD, PLLC
Counsel for Plaintiff
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mserard@gmail.com

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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INTRODUCTION

1. This suit seeks a declaration that MCL 168.472a is unconstitutional as applied to statutory initiative petitions under Const 1963 art 2 § 9, and a preliminary and permanent injunction requiring Defendant to canvass Plaintiff's filed petition without exclusion of petition signatures under that statute.

2. MCL 168.472a states:

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

PARTIES AND JURISDICTION

3. Plaintiff Committee to Ban Fracking in Michigan is a ballot question committee¹ properly formed under the laws of Michigan and headquartered in Charlevoix.

4. Defendant Board of State Canvassers is the four-member body established by statutory implementation of Const 1963, art 2, § 7, which is responsible for canvassing filed statutory initiative petitions and issuing an official declaration of each such petition's sufficiency or insufficiency.²

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

¹ MCL 169.202(3).

² MCL 168.476-77(1).

PROCEDURAL HISTORY

6. On June 1, 2016, Plaintiff filed suit in this Court (Case No. 16-000122-MM) against Defendant Board of State Canvassers, along with the Director of Elections and Secretary of State, seeking a declaratory judgment holding MCL 168.472a unconstitutional as applied to statutory initiative petitions under Const 1963 art 2 § 9. This Court did not rule on the merits and instead held the suit unripe because Plaintiff had not yet filed its petition. The Court of Appeals affirmed.³

7. Upon filing its petition with the Secretary of State, Plaintiff filed suit against the same defendants in this Court on or about December 27, 2018, Case No. 18-000274-MM. It was re-assigned several times, ending with Hon. Christopher M. Murray.

8. In sum, the complaint alleged that Plaintiff began collecting signatures for a statutory ballot initiative in May, 2015. On November 5, 2018, it filed 271,021 signatures on 52,015 petition sheets, 7% more than the required minimum of 252,523.

9. Unlawfully (see below), the Bureau of Elections (“BOE”) refused to accept Plaintiff’s petition. Plaintiff promptly notified Defendant, but it refused to overrule the BOE.

³ *Comm to Ban Fracking in Mich v Dir of Elections*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 334480), 2017 Mich. App. LEXIS 405.

10. The complaint in Case No. 18-000274-MM alleged several counts to overturn the refusal to accept the signatures. It also sought a declaration that MCL 168.472a is unconstitutional.

11. This Court did not reach the constitutional question of 472a, and on July 24, 2019, held that the defendants properly rejected the signatures.

A. On April 2, 2020, the Court of Appeals Reversed and Remanded to the Secretary of State.

12. On April 2, 2020, the Court of Appeals reversed and remanded to the Secretary of State, stating:

Constitutional and statutory initiative and referendum provisions should be liberally construed to effectuate their purposes, to facilitate rather than hamper the exercise by the people of these reserved rights. [footnote omitted] ... On remand, the Secretary shall accept the petition for filing and forward it to the Board for canvassing as required by the statute. ... [T]he petition must be treated as having been filed on [November 5, 2018]. To hold otherwise would punish petition sponsors and the electorate for unlawful actions taken by election officials.⁴

13. In a footnote, the Court added that challenges to and sufficiency of a petition must be finally determined 100 days before the election,⁵ which this year is on November 3. Which is to say, canvassing must be complete by July 26 (a Sunday), in order that the Legislature and the voters be able to consider the proposal this year.

14. The Court of Appeals did not retain jurisdiction. Like the Court of Claims, it did not reach the constitutional question.

⁴ *Committee to Ban Fracking in Michigan v. Secretary of State*, unpublished per curiam opinion of the Court of Appeals, issued April 2, 2020 (Docket No. 350161), 2020 Mich. App. LEXIS 2563, at p 5.

⁵ MCL 168.477.

B. Having already delayed for 17 months, Defendant delayed action again until June 8.

15. On June 8, 2020, over two months after the Court of Appeals, Defendant certified that Plaintiff's petition was insufficient.

16. Defendant made its determination on the basis of the BOE's staff report⁶ finding that approximately 89% of the petition signatures were collected more than 180 days before the date of filing and thus barred from being counted under MCL 168.472a.

C. The Committee files in the Supreme Court under 479. The Court declines to rule.

17. Two days later, on June 10, 2020, Plaintiff filed an action for mandamus in the Supreme Court pursuant to MCL 168.479.

18. On July 2, 2020, the Supreme Court denied Plaintiff's petition through an order stating the following:

On order of the Court, the motion for immediate consideration is GRANTED. The complaint for mandamus is considered, and relief is DENIED, because the Court is not persuaded that it should grant the requested relief. The motion to dismiss is DENIED as moot.⁷

19. Plaintiff now has no avenue for relief other than this Court. It returns here for a declaration, particularly one which would be in time for Defendant to complete its job by July 26, 2020 and in time for consideration by the Legislature or electorate this year.

⁶ Exhibit A.

⁷ *Comm to Ban Fracking in Mich v Bd of State Canvassers*, __ Mich __ (2020), No. 161453 (July 2, 2020).

20. As Defendant previously agreed in Case No. 18-000274-MM, a denial of a writ of mandamus without opinion is not entitled to preclusive effect.⁸ Accordingly the Supreme Court's order of July 2, 2020 is of no import in deciding the present case.

21. The canvassing deadline of July 26, 2020 is fast approaching. Plaintiff does not have a ruling on the point it has tried to adjudicate for four years, first because it had not filed signatures yet, and now even after it did file. The Committee is entitled to a ruling.

GENERAL ALLEGATIONS

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

There is no specific authority for such statute in Const 1963 [art 2, § 9] We read the stricture of that section, "the legislature shall implement the provisions of this section," as a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate. This constitutional procedure is self-executing. . . . It is settled law that the legislature may not act to impose additional obligations on a self-executing constitutional provision.¹⁰

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

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

⁸ See *Hoffman v Silverhorn*, 137 Mich 60, 64 (1904).

⁹ 384 Mich 461 (1971).

¹⁰ *Id.* at 466 (internal quotation mark omitted).

24. 472a was enacted originally in 1973. According to contemporaneous media accounts, the political background was a constitutional initiative of the Legislative Salary Amendment Committee, which proposed to cut lawmakers' salaries.¹¹

25. Apart from two stylistic wording changes made by a 1999 legislative amendment,¹² this same original version of 472a, permitting rebuttal of the presumed staleness of signatures older than 180 days, was in force when Plaintiff began collecting signatures on its initiative petition in May of 2015.

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

This provision has been held to be self-executing [citing *Wolverine Golf Club*]. Although that provision concludes with language to the effect that the legislature should implement the provisions thereof, such language has been given a very limited construction by the Michigan Supreme Court, which held that this provision is merely:

“... a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate....”

¹¹ Exhibit B, Kenyon, *Housewife Seeks Cut in Legislators' Pay*, Battle Creek Enquirer (March 24, 1972), p 6; News-Palladium, *New Bill Eases Petition Rules*, News-Palladium (July 26 1973), p 10; Times Herald, *Kelley Rules Petition Drive Time Limits Unconstitutional*, Times Herald (August 14, 1974), p 10.

¹² 1999 PA 219 substituted “that” for “which” and “the signature” for “it.”

I am consequently of the opinion that, as applied to signatures affixed to petitions which initiate legislation pursuant to Const 1963, art 2, § 9, § 472a is beyond the legislature's power to implement [and] said section and is therefore unconstitutional and unenforceable.¹³

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

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

Of extreme importance to resolution of the present controversy is focus on the absence of a call for legislative action in Const 1908, art 17, § 2 and the clear presence of one in Const 1963, art 12, § 2 as evidenced in the sentence:

Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law.

....

This distinction is of considerable significance and indeed provides the authorization for the Legislature to have enacted MCL 168.472a, MSA 6.1472(1). The Constitution of 1963, unlike that of 1908, does summon legislative aid in the area of the form of these petitions as well as in the areas of circulation and signing.¹⁵

¹³ Exhibit C: OAG 1974, No. 4813 at 172 (quoting 384 Mich at 466).

¹⁴ 426 Mich 1; 392 NW2d 513 (1986).

¹⁵ 426 Mich at 5-9.

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

30. On August 8, 1986, while *Consumers Power* was on appeal from the circuit court, Defendant Board of State Canvassers adopted a policy of attempting to implement the 180-day statute and applied it to *both* constitutional *and* statutory initiatives. The policy stood without challenge until December 14, 2015, when then serving State Elections Director and Secretary of the Board of State Canvassers, Christopher Thomas, proposed an amendment to the 1986 implementation policy. By letters of January 8 and 21, 2016, Plaintiff's legal counsel reminded Defendant that *Consumers Power* did not apply to statutory initiatives, and that *Wolverine Golf Club* continued to bind them as to statutory initiatives.

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

MR. BOAL: So whatever else you decide, the Attorney General's opinion [OAG 4813] continues to bind you as to statutory initiatives. It was only overturned as to constitutional initiatives [by *Consumers Power*]. I've said this before. I've asked for anybody who disagrees with me to say that they disagree with me, including Chris Thomas, including John Griffin, who is back here representing the oil and gas industry, and no one has come forward with any counter argument to that. So I consider that this stands, you know, unrebutted.

...

MR. THOMAS: I guess I would only say I don't have a case to cite about a legislative initiative. I would say we have applied it to a legislative initiative as we've canvassed petitions ever since the 1986 case. So I guess there is a feeling that if it's good for one, it's good for the other. I don't see anything that specifically would say that if 180 days is good for getting ten percent of the vote, why wouldn't it be good for getting eight percent of the vote? So we have operated under it just so. I take your point. I don't have a case and I don't have anything else. But just so the record's clear, we have operated that way.¹⁶

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

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

33. In the Governor's press release announcing his signing of the amendatory bill enacted as 2016 PA 142, the Governor asserted no objective related to the voter registration status of petition signers or the validity of their signatures, but rather attributed to it the

¹⁶ Exhibit D.

sole purpose of “help[ing] ensure the issues that make the ballot are the ones that matter most to Michiganders.”¹⁷

34. Under 1994 PA 441, enacted eight years after the Supreme Court’s *Consumers Power* decision, the legislature established the Qualified Voter File. Use of this technology is now statutorily mandated for the process of determining the validity of initiative petition signatures¹⁸ and provides for the immediate verifiability of voters’ registration status and residence information both presently and on a petition signature’s date of signing.¹⁹

CLAIMS

VIOLATION OF CONST 1963, ART 2, § 9

35. Plaintiff incorporates by reference all preceding paragraphs as though repeated herein.

36. Because the language of Const 1963, art 2, § 9 summons no legislative aid in the areas of circulating and signing, the legislature’s extension of MCL 168.472a to statutory initiative petitions unlawfully infringes the reserved legislative powers of the

¹⁷ Office of Governor Rick Snyder, *Gov. Rick Snyder Signs Bill Establishing 180-day Deadline for Petition Signatures on Proposed Legislation and Constitutional Amendments* (published June 7, 2016) http://michigan.gov/snyder/0,4668,7-277-57577_57657-386394--,00.html (accessed July 3, 2020).

¹⁸ MCL 168.476(1).

¹⁹ *Id.*; MCL 168.509o; 509q.

people by curtailing the operation of the self-executing constitutional provision governing the statutory initiative process.²⁰

37. Because Const 1963 art 12, § 2's included call for legislative regulation is what "distinguishes" that section from other self-executing constitutional provisions "and indeed provides the authorization for the Legislature to have enacted MCL 168.472a" as applied to initiatives there under,²¹ it follows inescapably that no such authorization exists for 472a's extension to initiatives under art 2, § 9.

38. The omission by Michigan's constitutional framers of any similar such legislative regulatory authorization under art 2, § 9 is a reflection of that section's critically distinct purpose "as an express limitation on the authority of the Legislature."²²

39. Because neither the Attorney General nor any court has overruled the finding of OAG 1974, No. 4813, as applied to initiatives under Const 1963, art 2, § 9,²³ Defendant's present policy of enforcing 168.472a's 180-day exclusion of voter signatures on statutory initiative petitions contravenes Defendant's binding obligation to abide formal attorney general opinions.²⁴

²⁰ See *Wolverine Golf Club*, 384 Mich at 466.

²¹ *Consumers Power Co*, 426 Mich at 9.

²² *Woodland v Mich Citizens Lobby*, 423 Mich 188, 214; 378 NW2d 337 (1985).

²³ Since 2016 PA 142's later amendment to MCL 168.472a only increased the stringency of the legislative restriction deemed invalid by the Attorney General, OAG 4813 extends *a fortiori* to 472a's current form.

²⁴ See *Mich Beer & Wine Wholesalers Ass'n v Attorney Gen*, 142 Mich App 294, 300; 370 NW2d 328 (1985).

40. Even if the Legislature were constitutionally vested the power to regulate the initiative process prescribed by art 2, § 9 in parallel to that prescribed by art 12, § 2, MCL 168.472a's unqualified mandate that legally *valid* signatures "shall not be counted" is a direct curtailment of the right and invocation-standard set forth by the Constitution.²⁵

41. In banning the countability of signatures of immediately verifiable voter registrants alongside the mandatory use of the Qualified Voter File for signature validation, MCL 168.472a lacks any rational connection to ensuring the registration of petition signers.²⁶

²⁵ Even in view of art 12, § 2's legislative regulatory authorization, the Supreme Court predicated its upholding of MCL 168.472a's restriction on constitutional amendatory initiative petitions on the since-legislatively-reversed fact that:

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

²⁶ Indeed, as openly confirmed by the Governor's written statement at the time of signing 2016 PA 142 into law, the present version of 472a is intended solely to reduce the successful invocation of the initiative power.

REQUEST FOR RELIEF

Wherefore, Plaintiff asks this Honorable Court to:

- a. Declare MCL 168.472a unconstitutional as applied to statutory initiatives under Const 1963, art 2, § 9;
- b. Enter a preliminary and permanent injunction requiring Defendant to canvass Plaintiff's petition, without exclusion of petition signatures under MCL 168.472a, by the statutory deadline of July 26, 2020; and
- c. Grant such other and further relief as the Court deems equitable and just.

Respectfully submitted,

/s/ Matthew Erard

Matthew Erard (P81091)
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/s/ Ellis Boal

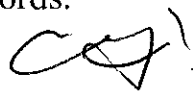
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Counsel for Plaintiff
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Dated: July 6, 2020

VERIFICATION

I am an attorney. I read the foregoing complaint. I verify from personal knowledge all the facts in it except those which are in public records.

Dated: July 6, 2020



Ellis Boal

Exhibit A



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

UPDATED June 3, 2020

**Committee to Ban Fracking in Michigan
Initiative Petition**

PRELIMINARY STAFF REPORT

SPONSOR: Committee to Ban Fracking in Michigan, P.O. Box 490, Charlevoix, Michigan 49720.

DATE OF FILING: May 1, 2020, but pursuant to the April 2, 2020 order of the Court of Appeals, the petition is deemed filed on November 5, 2018. *Committee to Ban Fracking v Sec of State*, unpublished opinion of the Court of Appeals, Dkt. No. 350161.

NUMBER OF VALID SIGNATURES REQUIRED: 252,523 signatures, the minimum signature threshold that was in effect on November 5, 2018.

Under MCL 168.472a, all of the signatures must have been gathered within 180 days of the date the petition was deemed filed: "The signature on a petition that proposes an amendment to the constitution or is to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state."

TOTAL FILING: Estimated by the petition sponsor to contain 270,962 signatures on 51,980 petition sheets, "collected over a 3½-year period[.]"¹ The sponsor also claims, "[a]t most, 65,000 signatures were collected in the 180 days prior to November 5, 2018. They can be found in the last of the numbered boxes."² When delivering the signatures on May 1, the petition sponsor informed Bureau staff that these signatures were in the last 7 boxes (boxes 41 through 47).

Update: At its meeting on Friday, May 22, 2020, the Board of State Canvassers directed staff to conduct a thorough count of every petition sheet and signature within the filing. The staff count was performed between Saturday, May 23 and Monday, June 1, and confirms the following:

52,015 petition sheets

271,021 signatures

METHODOLOGY: Staff counted every signature on every petition sheet in numbered boxes 41 through 47 (10,480 sheets).

¹ May 1, 2020 letter addressed to the Director of Elections and Secretary of State, p.3 (attached).

² *Id.*

The majority of signatures in boxes 43 through 47 were non-stale signatures dated within 180 days of the November 5, 2018 filing date (i.e., were signed on or after May 9, 2018); boxes 41 and 42 did not include any signatures gathered within the 180-day period (i.e., all were stale, dated on or before May 8, 2018).

Staff ceased the count after box 41 was completed and based on the sponsor's representations, believe every signature that was dated within 180 days of the deemed filing date has been accounted for. Note, however, that none of the petition sheets or signatures have been face reviewed or sampled, meaning the numbers below represent the ceiling of potentially valid signatures within the filing—assuming, again, that the petition sponsor's representation that all non-stale signatures are in the last 7 boxes is accurate.

Number of signatures filed within 180 days: 29,392 signatures have been confirmed by staff as being dated within 180 days of the November 5, 2018 filing date.³

Remainder of signatures – Update: 241,629 signatures have been confirmed by staff as collected more than 180 days prior to the November 5, 2018 filing date.

ESTIMATED NUMBER OF VALID SIGNATURES ON PETITION: No more than 29,392 signatures.

STAFF RECOMMENATION: Based on MCL 168.472a and staff's review of the petition, staff recommends that the Board certify that the petition contains an insufficient number of valid signatures to qualify for placement on the ballot.⁴

³ Boxes 41 through 47 also contained 19,534 stale signatures, or signatures dated on or before May 8, 2018. In total, boxes 41 through 47 contain 48,926 signatures (19,534 stale + 29,392 non-stale).

⁴ The Bureau has not completed a face review or sample of all 271,021 signatures. Therefore, this staff report does not include the number of signatures that would, setting aside the 180-day issue, otherwise be valid.

Exhibit B

Housewife seeks cut in legislators' pay

By QUANE KENYON
GRAND RAPIDS (AP) — It's not an easy task to get an initiative proposal on the general election ballot — even if you think most of the voters would approve it if given the chance.

That's the problem facing Mrs. James B. Beckett of Grand Rapids, an energetic mother of five children who has launched a petition drive to lower and control the salaries of state legislators.

Mrs. Beckett, wife of a Grand Rapids attorney, is founder, chairwoman and chief spokeswoman for the Legislative Salary Amendment Committee.

According to the committee, Michigan legislators are among the highest paid in the nation with a \$17,000 annual salary and \$9,000 a year in fringe benefits.

The committee has proposed a constitutional amendment to cut the legislators' salaries to \$15,000 annually and require voter approval prior to any future salary increase.

Mrs. Beckett's biggest complaint is that under the 1963 State Constitution, legislators can get pay raises without the public being allowed to vote on them.

"The voters have to have some control," she said. "They are intelligent enough to make the right decisions." Since last summer Mrs.



Mrs. James Beckett
... launched drive

Beckett has been running a shoestring campaign to get the required 350,000 valid signatures to put the proposed restrictions on the ballot.

The first 35,000 signatures haven't come easy. However, she said, "Voters have no apathy on this subject. They just need direction."

"There no question about it if this gets on the ballot this

November, it will get more votes than any other measure."

Her committee has had trouble getting support, Mrs. Beckett admitted, both actual and financial.

She said she "hoped to get 30,000 people" to help out, but, "We got 1,000."

The committee asked backers of the proposed amendment to send money. "We asked everyone to send \$1. That's what they sent — \$1 and no more," she said.

Her last financial report showed contributions of \$1,368.50. Much of that went to printing 52,000 copies of the petition.

Other roadblocks, the committee claimed, have been erected by shopping centers, postal service and fear of legislative reprisal.

Shopping centers are good places to collect signatures, but sometimes the operators won't let her group set up booths, Mrs. Beckett said.

Then there's the problem of the mails.

"I think we have lost 20 per cent of our mail because it has been incorrectly addressed," she said. That address, she added, is Post Office Box 1934, Grand Rapids.

Organized groups are slow to support her petition drive out of fear of reprisal from the legislature, Mrs. Beckett said. For the same reason, a local bank agreed to handle the money her committee collected only if it remained anonymous, she said.

"So far, we're right on schedule," she said. "Now we need to double our effort."

"It's a miracle that we've done so much with so little," Mrs. Beckett added.

Inn makes room for woman, beast

SUDBURY, Mass. (UPI) — The Wayside Inn, made famous by Henry Wadsworth Longfellow, has changed its slogan to adapt to women's liberation.

Francis J. Koppeis, innkeeper of the nonprofit inn and museum, said the slogan "Food and Lodging for Man and Beast," has been

er father?

appreciates these things. Talk it out with him and make sure you're on solid ground.

PAGE TEN

THE NEWS-PALLADIUM, BENTON HARBOR, MICH.

New Bill Eases Petition Rules

LANSING, Mich. (AP)—The legislature has backed off a tight restriction it imposed earlier this year on collecting petition signatures, but probably not enough to satisfy a Grand Rapids housewife.

Lawmakers voted Wednesday to extend from 90 to 180 days the time allowed for collection of signatures on petitions seeking constitutional amendments or new legislation.

Signatures older than 180 days would not be valid.

The bill was sent to Gov.

William Milliken after it was passed in the Senate 29-0 and in the House 86-5.

The measure is a modified version of a bill passed about two months ago that allowed signatures to be only 90 days old. Milliken signed that bill, but extracted a promise from legislative leaders that they would write a new bill with the extended 180-day allowance.

There were no time restrictions prior to the legislative action and Mrs. Lee Beckett, a Grand Rapids mother of five,

interpreted the restriction as an attempt to kill her petition drive to cut lawmakers' salaries.

Mrs. Beckett has collected about 153,000 signatures since 1970 on petitions seeking reduction of legislative salaries from \$17,000 to \$15,000 a year. She also wants to abolish the State Officers' Compensation Commission, which sets elected officials' salaries.

She hopes to collect about 150,000 more signatures to get the constitutional amendment on the November, 1974, ballot.

"You'd have to race like hell to get that number of signatures in 90 days," Mrs. Beckett said recently.

"Even 180 days is too short a period in which to collect 10 per cent of the total vote cast for governor. It's an attempt to limit our constitutional rights by law."

She said, "The limit infringes on the constitutional right to petition government for initiation of legislation or changes in our constitution." She is attempting to interest the American Civil Liberties Union in challenging the law.

A spokesman for Milliken said there is some doubt that Mrs. Beckett's petition drive would be halted by the new law, since she began collecting signatures long before the law was written.

Sen. Milton Zaagman, R-Grand Rapids, chairman of the Senate Municipalities and Elections Committee, supported the 180-day bill grudgingly.

"I think it is just yielding to pressure. I don't like it but if this commitment was made (to Milliken), I will keep it," he said Wednesday.

Zaagman said later, "There is

some pressure from possible public reaction. Mrs. Beckett is making statements that this reduces the ability to make constitutional changes."

Zaagman noted referendum petition signatures (for changing law) are good for only 90 days. "If it's good for a referendum, why isn't it good for initiative petitions?" he asked.

Former Canadian Leader Is Dead

OTTAWA (AP) — Louis St. Laurent, 91, prime minister of Canada from 1948 to 1957 and leader of the Liberal party, died Wednesday. One of Canada's leading constitutional authorities, St. Laurent served as a law professor at Laval University, president of the Canadian Bar Association in the 30s and leader of the Liberal party from 1948 to 1958.

FREDRICK AP

located in Coloma, across from life

Auto Sales Up 13 Per Cent

DETROIT (AP) — A sales surge by General Motors carried auto industry sales for the middle 10 days of July to a 13 per cent gain over the same period a year ago.

Sales figures released by the four largest domestic automakers revealed sales during the 10-day period totaled 310,431, compared to 274,272 sales during mid-July in 1972.

There were nine selling days in both of the 10-day periods.

GM recorded a 32 per cent

just before the mid-July selling period.

Ford had sales of 59,136 for the period, a 12 per cent drop from 78,544 sales the previous year. Chrysler's sales were down two per cent from 44,346 sales in mid-July 1972 to 43,355 this month.

Industry sales for the year totaled 6,749,956, a 13 per cent increase from 5,957,073 units sold during the same period in 1972.

GM showed a 16 per cent gain for the period, from 2,614,882 in 1972 to 2,996,887 so far this year. Ford was up nine per cent from 1,454,125 to 1,589,480 and Chrysler advanced 13 per cent from 819,512 to 925,337.

American Motors, however, has shown the largest sales gain, recording 228,262 sales so far this year—a 35 per cent increase over the 168,954 cars sold during the same period last year.

Kelley rules petition drive time limits unconstitutional

LANSING (AP) — Michigan citizens will have more time to collect signatures on petition drives under an opinion issued Tuesday by Atty. Gen. Frank Kelley.

Kelley ruled unconstitutional a 1973 law which required petition signatures be gathered within 180 days of the date they are filed. Kelley's opinion stands as law unless successfully challenged in court.

Kelley ruled signatures for petitions

seeking to change state law or the Michigan Constitution can be gathered over any period of time during the four years between gubernatorial elections. The number of required signatures is based on the number of votes in the governors race.

The decision apparently will have no effect on proposals appearing on the November ballot. However, the 180-day limit has affected petition drives which failed to meet the 180-day deadline.

Unsuccessful petition drives must begin anew after this November's gubernatorial vote, Kelley said, since that vote determines how many signatures are needed for the petition to be a success.

Petition drives begun after November will have four years to gather sufficient signatures.

The opinion was issued at the request of Sen. Gary Byker, R-Hudsonville, who asked for it on behalf of Lee Beckett, a Grand Rapids housewife conducting a petition drive to reduce legislative salaries. The drive did not acquire sufficient signatures this year to be filed with the secretary of state's office.

State Elections Director Bernard Apol said he did not have any petitions affected by the 180-day limitation, and said his office had never ruled any petition out because of the restriction.

The old law states signatures on petitions are "presumed to be stale and void" if gathered more than 180 days before filing. But Kelley said the law provided no indication of what proof might be used to overcome such a presumption.

Citing a previous Supreme Court decision, Kelley said that "petitions and the signatures affixed to them are valid for as long as a particular basis (vote cast) remains in effect...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."

GM denies suggestion price timing planned

DETROIT (AP) — Did General Motors time its announcement of record price increases for 1975 models so it would be obscured by the biggest news story of the decade?

The company denies it, but at least one newspaper columnist has suggested the firm purposely released the bad news of a 10 per cent price increase while the nation was watching a farewell speech from the first president to resign in U.S. history.

Pete Waldmeir of the Detroit News noted in Tuesday's editions that GM's public relations staff distributed announcement of the average \$500 price increase to the media at 9:30 a.m. Friday.

That was the time Richard Nixon was saying goodbye to his White House staff before national television, and only hours before President Ford was to be sworn in.

"The combination guaranteed that all other news stories, no matter how profound their impact on the people or the economy, would be buried deep inside the newspapers of the land," Waldmeir wrote.

He noted the story of GM's price hike appeared on an inside page of the third section in the News' afternoon edition Friday. Normally the story would rate a

Fewer strikes

Exhibit C

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

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

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

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

FRANK J. KELLEY,
Attorney General.

740813.1

CONSTITUTIONAL LAW: Amendments

CONSTITUTIONAL LAW: Initiative

ELECTIONS: Constitutional Amendment

ELECTIONS: Initiative

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

Opinion No. 4813

August 13, 1974.

Honorable Gary Byker
State Senator
The Capitol
Lansing, Michigan 48901

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

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

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

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

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

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

* * *

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

This provision has been held to be self-executing. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466; 185 NW2d 392 (1971). Although that provision concludes with language to the effect that the legislature should implement the provisions thereof, such language has been given a very limited construction by the Michigan Supreme Court, which held that this provision is merely:

" . . . a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate. . . ." [*Wolverine Golf Club v Secretary of State*, *supra*, at 466]

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

FRANK J. KELLEY,
Attorney General.

740814.1

COUNTIES: Board of Health; Board of County Commissioners

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

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

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

Opinion No. 4825

August 14, 1974.

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

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

Exhibit 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:

For the State: MS. DENISE C. BARTON (P41535)
MR. ERIK GRILL (P64713)
MR. ADAM FRACASSI (P79546)
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1

EXHIBITS

2

Exhibit 1 marked. 4
(Agenda)

3

Exhibit 2 marked. 4
(Results of canvass for Kent, Allegan, and Lapeer
Counties; Official Election Results)

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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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**STATE OF MICHIGAN
COURT OF CLAIMS**

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Plaintiff,

Court of Claims # _____

v

Hon. _____

BOARD OF STATE CANVASSERS,

Defendant.

_____/

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_____/

**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

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Now comes the Plaintiff, by and through counsel, and, for the reasons outlined in the accompanying brief, hereby moves this Honorable Court under MCR 3.310(A)-(B) to enter a temporary restraining order and/or preliminary injunction requiring Defendant to canvass Plaintiff's statutory initiative petition, without exclusion of signatures dated over 180 days from the date of filing, by the statutory deadline of July 26, 2020.¹

Pursuant to LR 2.119(2), by email Ellis Boal requested opposing counsel's concurrence to the relief sought in the early morning of July 6, 202, and no response has been received.

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Dated: July 6, 2020

¹ MCL 168.477(1).

**STATE OF MICHIGAN
COURT OF CLAIMS**

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Plaintiff,

Court of Claims # _____

v

Hon. _____

BOARD OF STATE CANVASSERS,

Defendant.

_____/

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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

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INTRODUCTION

Following Defendant Board of State Canvassers' declaration of insufficiency to Plaintiff's statutory initiative petition, Plaintiff brought this action challenging the constitutionality of MCL 168.472a's prohibition on counting signatures collected on statutory initiative petitions under Const 1963, art 2, § 9 if such signatures are dated more than 180 days prior to the petition's date of filing.

In light of the fast-approaching July 26, 2020 statutory deadline to complete the canvassing of petitions for any initiatives subject to potential placement on the November ballot,² Plaintiff concurrently brings this motion under MCR 3.310(A)-(B) for a temporary restraining order and/or preliminary injunction requiring Defendant to canvass Plaintiff's petition by the forthcoming July 26 deadline without exclusion of those signatures dated over 180 days before filing.

STATEMENT OF FACTS

In 1971, the Supreme Court decided *Wolverine Golf Club v Secretary of State*, 384 Mich 461 (1971), striking down MCL 168.472's prohibition on filing statutory initiative petitions fewer than ten days prior to the start of a legislative session. The reason: Const 1963, art 2, § 9 did not authorize the Legislature to impose such a restriction on the process for invoking a statutory initiative:

² MCL 168.477(1).

There is no specific authority for such statute in Const 1963 [art 2, § 9] We read the stricture of that section, “the legislature shall implement the provisions of this section,” as a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate. This constitutional procedure is self-executing. . . . It is settled law that the legislature may not act to impose additional obligations on a self-executing constitutional provision. [384 Mich at 466].

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

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

Apart from two stylistic wording changes made by a 1999 legislative amendment,³ this same original version of 472a, permitting rebuttal of the presumed staleness of signatures older than 180 days, was in force when Plaintiff began collecting signatures on its initiative petition in May of 2015.

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

³ 1999 PA 219 substituted “that” for “which” and “the signature” for “it.”

This provision has been held to be self-executing [citing *Wolverine Golf Club*]. Although that provision concludes with language to the effect that the legislature should implement the provisions thereof, such language has been given a very limited construction by the Michigan Supreme Court, which held that this provision is merely:

“... a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate....”

I am consequently of the opinion that, as applied to signatures affixed to petitions which initiate legislation pursuant to Const 1963, art 2, § 9, § 472a is beyond the legislature’s power to implement [and] said section and is therefore unconstitutional and unenforceable. [OAG 1974, No. 4813 at 172 (quoting 384 Mich at 466)]

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

In *Consumers Power Company v Attorney General*, 426 Mich 1 (1986), the Supreme Court affirmed a judgment of the circuit court which overruled OAG 1974, No. 4813, but only as applied to constitutional amendatory initiatives under Const 1963, art. 12, § 2. The Supreme Court based its holding on a distinct single-sentence provision of art. 12, § 2 serving to summon legislative aid in the regulation of circulation and signing for petitions under that constitutional section.

In contrast to Const 1963, art 12, § 2, the language of art 2, § 9 contains no similar call for legislative action respecting the manner of circulating and signing

statutory initiative petitions. Hence, the Court's *Consumers Power* decision did not disturb the finding of OAG 4813 as applied to statutory initiatives.

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

By letters of January 8 and 21, 2016, Plaintiff's legal counsel reminded Defendant that *Consumers Power* did not apply to statutory initiatives, and that *Wolverine Golf Club* continued to bind them as to statutory initiatives. Plaintiff's legal counsel testified to Defendant to the same effect on March 24, 2016. On this occasion, in response to a specific query about *Wolverine Golf Club* and *Consumers Power*, Defendant's Secretary admitted that the Secretary of State's Bureau of Elections had been treating petitions under Const 1963, art 2, § 9 the same as petitions under art 12, § 2 based on the "feeling that if it's good for one, it's good for the other."⁴

On June 9, 2016, the legislature enacted 2016 PA 142, which amended MCL 168.472a by replacing the preceding rebuttable presumption of staleness to

⁴ Complaint ¶ 30.

signatures over 180 days old with the irrebuttable preclusion of such signatures from being counted. As amended, the wording of MCL 168.472a now states:

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

In the Governor's press release announcing his signing of the amendatory bill enacted as 2016 PA 142, the Governor asserted no objective related to the voter registration status of petition signers or validity of their signatures, but rather attributed it the sole purpose of "help[ing] ensure the issues that make the ballot are the ones that matter most to Michiganders."⁵

Under 1994 PA 441, enacted eight years after the Supreme Court's *Consumers Power* decision, the legislature established the Qualified Voter File. Use of this technology is now statutorily mandated for the process of determining the validity of initiative petition signatures⁶ and provides for the immediate verifiability of voters' registration status and residence information both presently and on a petition signature's date of signing.⁷

⁵ Office of Governor Rick Snyder, *Gov. Rick Snyder Signs Bill Establishing 180-day Deadline for Petition Signatures on Proposed Legislation and Constitutional Amendments* (published June 7, 2016) <http://michigan.gov/snyder/0,4668,7-277-57577_57657-386394--,00.html> (accessed July 3, 2020).

⁶ MCL 168.476(1).

⁷ *Id.*; MCL 168.509m; 509o; 509q.

On November 5, 2018, Plaintiff filed 271,021 vetted signatures on 52,015 petition sheets, amounting to 7% more than the applicable threshold of 252,523 signatures. Following an extended legal battle over the unlawful prior refusal of Defendant and the Secretary of State to accept Plaintiff's petition filing, the Board of State Canvassers officially declared Plaintiff's petition insufficient on June 8, 2020. Without conducting a sample or direct canvass of Plaintiff's petition, Defendant based its declaration on the Bureau of Elections' preliminary staff report's undisputed finding that approximately 89% of Plaintiff's petition signatures were collected over 180 days prior to the filing date, thus rendering them barred from being counted under MCL 168.472a.

STANDARD OF REVIEW

In ruling on a motion for preliminary injunction, the Court must consider four factors: (1) the movant's likelihood of succeeding on the merits, (2) the danger that the movant will suffer irreparable harm if the injunction is not issued; (3) the risk that the movant would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. *Barrow v City of Detroit Election Comm'n*, 305 Mich App 649, 662 (2014).

ARGUMENT

I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS.

A. MCL 168.472a is Unconstitutional as Applied to Statutory Initiative Petitions Under Const 1963, art 2, § 9.

As a constitutional power reserved to the people of Michigan, the statutory initiative procedure under Const 1963, art 2, § 9 is not merely an election process, but rather “an express limitation on the authority of the legislature.” *Woodland v Mich Citizens Lobby*, 423 Mich 188, 214 (1985). Because MCL 168.472a imposes a direct curtailment of a self-executing constitutional provision permitting no legislative intrusion, its extension to statutory initiative petitions cannot be constitutionally sustained.

1. The Statutory Initiative Provision of Const 1963, art 2, § 9 is Self-Executing and Prohibitive of Legislative Meddling.

The statutory initiative procedure of Const 1963, art 2, § 9 is a self-executing constitutional provision which grants the legislature no authority to impose additional obligations on its criteria for an initiative’s invocation. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466 (1971).

In *Wolverine Golf Club*, the Supreme affirmed a decision of the Court of Appeals which had ordered the Canvassers “forthwith” to accept initiatory petitions “for canvass” and immediate submission to the Legislature, though the petitions violated the 10-day timing provision of MCL 168.472. The reason: MCL

168.472 was not a “constitutionally permissible implementation” of art 2, § 9:

We do not regard this statute as an implementation of the provision of Const 1963 art 2, § 9. We read the stricture of that section, “the legislature shall implement the provisions of this section,” as a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or electorate. This constitutional procedure is self-executing. . . . It is settled law that the legislature may not act to impose additional obligations on a self-executing constitutional provision. [384 Mich at 466].

In enacting valid legislation supplemental to a self-executing constitutional provision, such legislation must have the “object to further the exercise of constitutional right and make it more available, and such law must not curtail the rights reserved, or exceed the limitations specified.” *Wolverine Golf Club v Secretary of State*, 24 Mich App 711, 730 (1970), aff’d 384 Mich 461 (1971). Conversely, by mandating that valid and verifiable signatures of registered electors “shall not be counted,” 472a not only subjects the process to additional obligations, but directly contravenes the process and benchmark criteria set forth by the constitution itself.

In spite of *Wolverine Golf Club* and the issuance of an Attorney General Opinion finding 472a’s less-stringent former iteration to be invalid as to statutory initiative petitions on the basis of that precedent,⁸ Defendant has relied fully on *Consumers Power Company v Attorney General*, 426 Mich 1 (1986), to justify enforcing the statute against constitutional amendatory and statutory initiative

⁸ OAG 1974, No. 4813

petitions alike.⁹ Yet not only was the *Consumers Power* Court’s review exclusively limited to the constitutionality of 472a’s former version as applied to constitutional amendatory initiatives under Const 1963, art 12, § 2, but its ratio decidendi very strongly further underscores the invalidity of the statute’s application to initiatives under art 2, § 9.

Despite the statute having then imposed only a rebuttable presumption of staleness to signatures collected over 180 days before filing, the *Consumers Power* Court fully grounded its holding upon the distinct provision of art 12, § 2 providing that “[a]ny such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law.” 426 Mich at 5. Noting the “extreme importance” of the fact that the sentence just quoted “summons legislative aid . . . in the areas of circulating and singing,” the Court held that this distinct sentence of art 12, § 2 is what “provides the authorization for the Legislature to have enacted MCL 168.472a” as a measure to “prescribe by law the manner of signing and circulating petitions to propose constitutional amendments.” 426 Mich at 6, 9 (emphasis added).

The *Consumers Power* Court correspondingly relied on that sentence of art 12, § 2 to distinguish its holding from that previously reached in *Hamilton v Secretary of State*, 221 Mich 541 (1923). There, notwithstanding Const 1908, art 17, § 2’s

⁹ See Complaint ¶ 31 (quoting 2016 testimony of Defendant’s then-serving Secretary Christopher Thomas).

equivalent limitation of petition signers to “registered electors of this state,” the Supreme Court rejected the state defendant’s contention that signatures dated 20 months prior to filing on a petition circulated under that section were not collected within a reasonable period. 221 Mich at 544. Here, just as with the former constitutional provision at issue in *Hamilton*, the self-executing procedure of art 2, § 9 “summons no legislative aid and will brook no elimination or restriction of its requirements.” *Id.* Rather, “it grants rights on conditions expressed, and if its provisions are complied with and its procedure followed its mandate must be obeyed.” *Id.*

2. MCL 168.472a Unconstitutionally Curtails the Right of Initiative.

Following the Supreme Court’s very narrow construction of art 2, § 9’s implementation clause,¹⁰ the Court of Appeals very recently reaffirmed that the “clear intent in this provision is ‘to limit the power of the legislature to that which is ‘necessary’ to the effective implementation of the initiative right.’” *League of Women Voters v Secretary of State*, __ Mich App __, __ (2020), 2020 Mich. App. LEXIS 709 at *27, quoting *Wolverine Golf Club*, 24 Mich App at 735. Yet, 472a represents the very opposite of such an implementation measure. Providing no facilitative function, it operates only as an extra-constitutional barrier to *prevent* petitioned legislation from reaching the legislature or the electorate.

¹⁰ *Wolverine Golf Club*, 384 Mich at 466.

Having reviewed the version of 472a existing prior to the amendment of 2016 PA 142, the *Consumers Power* Court predicated its upholding of the statute's application to constitutional amendatory initiatives on the fact that:

The purpose of the statute is to fulfill the constitutional directive of art. 12 sec. 2 that only the registered electors of this state may propose a constitutional amendment. The statute does not set a 180-day time limit for obtaining signatures. The statute itself *establishes no such time limit*. It states rather that if a signature is affixed to a petition more than 180 days before the petition is filed it is presumed to be stale and void. But that presumption can be rebutted. [426 Mich at 8].

But the 2016 amendment replaced the rebuttable presumption with an irrebuttable exclusion of signatures older than 180 days from being counted. Consequently, MCL 168.472a now imposes precisely the type of curtailment that the Supreme Court comparatively contemplated and implied would fail to “follow[] the dictates of the constitution,” even as applied to art 12, § 2.

While the Supreme Court construed that the rebuttable presumption imposed by 472a's former iteration was intended to fulfill the constitutional directive that petition signers must be registered electors of the state,¹¹ the statute's present formulation could hardly be more poorly tailored to that objective. While even those signers indicated by the Qualified Voter File (“QVF”) to be unregistered on the date of signing may rebut the presumption of invalidity to their signatures,¹² the statute now imposes an absolute bar to counting *valid* signatures of registered

¹¹ *Consumers Power Co*, 426 Mich at 8

¹² MCL 168.476(1)

electors dated over 180 days, irrespectively of those electors' immediately verifiable registration status and residence information.¹³

No longer a safeguard for simply subjecting older signatures to greater scrutiny, the legislature has transformed 472a into a mechanism for restricting the utilization of the initiative process. Indeed, with open acknowledgment of its sole aim of reducing the number of initiatives making the ballot,¹⁴ the legislature has done so even as the QVF has superannuated any distinction as to the determinable validity of older signatures relative to those signed closer to the time of filing.

II. PLAINTIFF WILL SUFFER IRREPARABLE HARM IF A PRELIMINARY INJUNCTION IS NOT ISSUED.

Absent a preliminary injunction, Plaintiff would be denied the opportunity to place its statutory initiative for approval by the legislature or the state's voters, putting to waste all of the great many thousands of hours donated by Plaintiff's nearly 1,000 volunteer circulators. The 271,021 state voters who signed Plaintiff's petition would also be denied not only the invocation of their supported initiative, but even the chance to simply have their signatures counted.

Further, because Plaintiff has no other recourse to challenge 472a's exclusion of its petition signatures, a preliminary injunction is the only means to prevent an unconstitutional statute from irreparably depriving Plaintiff's exercise of the right

¹³ *Id.*; MCL 168.509m; 509o; 509q.

¹⁴ See Office of Governor Rick Snyder, *supra* n 5.

secured by Const 1963, art 2, § 9. See *Garner v Mich State Univ*, 185 Mich App 750, 764 (1990) (observing that even a “temporary loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law.”).

III. NO HARM TO DEFENDANT IS APPLICABLE.

To the extent that Defendant would incur any conceivable burden from canvassing Plaintiff’s petition, it is one squarely within its primary duties and substantially minimized by Defendant’s random sampling procedure for petition signatures. And any harm to Defendant from the need for a temporary restraining order or preliminary injunction at this time has been brought on by Defendant itself, having spent 17 months maintaining and defending the unlawful refusal to recognize and accept Plaintiff’s petition filing, followed by additional rounds of delay in issuing its declaration of insufficiency.¹⁵ The balance of harms thus weighs decidedly in favor of Plaintiff.

IV. GRANTING A PRELIMINARY INJUNCTION WILL ADVANCE THE PUBLIC INTEREST.

Plaintiff does not seek a preliminary injunction to directly advance its initiative to the legislature or election ballot, but rather only to require that Defendant canvass Plaintiff’s signatures by the July 26, 2020 statutory deadline without excluding those collected over 180 days prior to filing. That date being the final

¹⁵ See Complaint ¶¶ 7-15.

date for completion of that process before the potential placement of Plaintiff's initiative on the November ballot would otherwise become foreclosed. The scope of preliminary injunctive relief requested is thus limited only to that which is essential to preventing irreparable harm and preserving the status quo.

Finally, while the public interest may generally be served by seeing the execution of the laws enacted by the people's representatives, that interest is dampened when such a law's object is to curtail a power that the people expressly "reserve to themselves" in their constitution. Const 1963, 2, § 9. Particularly in so far as MCL 168.472a is constitutionally infirm, the public interest must align with constitutional protection as "it is always in the public interest to prevent enforcement of unconstitutional laws." *Roe v Snyder*, 240 F Supp 697, 712 (ED Mich 2017). Plaintiff's high likelihood of success on the merits of its constitutional challenge thus supports the public interest in enjoining the present violation.

REQUEST FOR RELIEF

Wherefore Plaintiff respectfully requests that this Honorable Court:

- A. Grant a temporary restraining order and/or preliminary injunction requiring Defendant to canvass Plaintiff's petition signatures by the July 26, 2020 statutory deadline, without exclusion of those signatures dated more than 180 days before the date of filing; and

B. File its response to this motion within two days of the date of service.

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Dated: July 6, 2020.

EXHIBIT I

STATE OF MICHIGAN
COURT OF CLAIMS

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Plaintiff,

OPINION AND ORDER REGARDING
PLAINTIFF'S REQUEST FOR A
TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION

v

Case No. 20-000125-MM

BOARD OF STATE CANVASSERS,

Hon. Christopher M. Murray

Defendant.
_____ /

Pending before the Court is plaintiffs' July 6, 2020 motion for a temporary restraining order and/or preliminary injunction. Notice of the filing was provided to the state defendant, and an order was issued ordering defendant to file a response to the motion no later than Wednesday, July 15. Defendant did so, and plaintiff has filed a reply. The motion raises pure legal issues, and there are no factual disputes. The Court will decide the motion without oral argument. LCR 2.119(A)(6). Because this Court lacks subject-matter jurisdiction over plaintiff's complaint, plaintiff's motion is DENIED as moot and the complaint is DISMISSED. See MCR 2.116(I)(1).

I. PERTINENT FACTS AND PROCEDURAL HISTORY

As recounted in a prior lawsuit¹, the 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

¹ See *Committee to Ban Fracking in Michigan v Dir of Elections*, Opinion and Order of the Court of Claims, (Docket No. 16-000122-MM), where many of these background facts are taken from.

put before the electorate a ballot proposal to ban the in-state practice of horizontal hydraulic fracturing (“fracking”). 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 petition’s form. 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.

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 it would be unable to place the measure on the ballot in 2016, plaintiff 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, plaintiff (and others) filed a complaint in this Court challenging the constitutionality of the 180-day rule. Plaintiff 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 the constitutional challenge was not ripe for consideration because the ability to obtain the requisite number 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 plaintiff had not submitted the petition or collected the required number of signatures, it failed “to establish more than a hypothetical violation of their constitutional rights under Const 1963, art 2, § 9” and the claim was not ripe for adjudication. *Id.* The Court of Appeals affirmed. *Committee to Bank Fracking in Michigan v Dir of Elections*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 334480).

With this new lawsuit, CBFM claims that defendant, through application of the 180-day rule, rejected it’s petitions as having insufficient signatures, and therefore asks the Court to rule MCL 168.472a unconstitutional. The evidence is indeed undisputed that the Board denied enough petitions under the 180-day rule to reject CBFM’s initiative petitions. It is also undisputed that plaintiff previously filed in the Supreme Court a complaint for writ of mandamus, arguing that MCL 168.472a was unconstitutional, and asking that Court to order the Board to accept the petitions. That request for relief was denied, which led CBFM to file a new suit here.

II. ANALYSIS

“The objective of a preliminary injunction is to maintain the status quo pending a final hearing regarding the parties’ rights.” *Alliance for the Mentally Ill of Mich v Dep’t of Community Health*, 231 Mich App 647, 655–656; 588 NW2d 133 (1998). The status quo has been defined as “ ‘the last actual, peaceable, noncontested status which preceded the pending controversy.’ ” *Buck v Thomas Cooley Law School*, 272 Mich App 93, 98 n 4; 725 NW2d 485 (2006), quoting *Psychological Services of Bloomfield, Inc v Blue Cross & Blue Shield of Michigan*, 144 Mich App 182, 185; 375 NW2d 382 (1985). In *Mich AFSCME Council 25 v Woodhaven–Brownstown Sch Dist*, 293 Mich App 143, 148; 809 NW2d 444 (2011), the Court of Appeals instructed that,

[w]hen deciding whether to grant an injunction under traditional equitable principles,

a court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued.^[2]

Not surprisingly, the Court will first turn to the initial consideration, i.e., whether plaintiffs have shown a likelihood of prevailing on the merits. Though plaintiffs do not have to prove they *will* succeed on the merits, they do have to prove that they have a *substantial likelihood* of success on the merits. *Int'l Union v Michigan*, 211 Mich App 20, 25; 535 NW2d 210 (1995).

Plaintiff cannot succeed. Indeed, this Court lacks jurisdiction to grant the relief requested.

As plaintiff is well aware, MCL 168.479(2) provides that:

If a person feels aggrieved by any determination made by the board of state canvassers regarding the sufficiency or insufficiency of an initiative petition, *the person must file a legal challenge to the board's determination in the supreme court within 7 business days after the date of the official declaration of the sufficiency or insufficiency of the initiative petition* or not later than 60 days before the election at which the proposal is to be submitted, whichever occurs first. Any legal challenge to the official declaration of the sufficiency or insufficiency of an initiative petition has the highest priority and shall be advanced on the supreme court docket so as to provide for the earliest possible disposition. [emphasis supplied.]

The plain language of this provision is clear—any challenge to the board's decision on an initiative petition must be filed in the Supreme Court. This language is mandatory, and the Court of Appeals in a prior appeal recognized this same fact. See *Committee to Bank Fracking in Michigan v Secretary of State*, unpublished per curiam opinion of the Court of Appeals, issued April 2, 2020

²Quoting in part *Alliance for the Mentally Ill*, 231 Mich App at 655–656.

(Docket No. 350161), slip op at 5 (“If the Board rejects the petition, plaintiff may seek review before the Supreme Court. See MCL 168.479.”).

Plaintiff in fact recognized this requirement as well, and filed a complaint for mandamus with the Supreme Court on June 10, 2020. In that filing plaintiff both recognized that the Court of Appeals indicated that the Supreme Court was the correct court in which to file its challenge to the Board’s rejection of the petition, and asserted that the Supreme Court “has original jurisdiction over an action challenging a determination of the Canvassers’ determination, pursuant to MCL 168.479.”³ In that pleading plaintiff presented the same constitutional argument—and sought the same relief—as it presents here, and the Court denied any relief. *Committee to Ban Fracking in Michigan v Board of State Canvassers*, __ Mich __; __ NW2d __ (2020) (Docket No. 161453).

As an attempted way to get around the broad and mandatory statutory language, plaintiff argues that MCL 168.479(2) does not bar this Court from hearing a claim for declaratory relief, as that type of relief is significantly different from a claim for a writ of mandamus. But the statute is not limited to filing a writ of mandamus with the Supreme Court. Instead, it states that a person aggrieved by a Board decision on the sufficiency of initiative petitions must file “a legal challenge” with the Supreme Court, thus allowing this expedited filing with the state’s highest court to include *any* legal challenge to the Board decision to reject the petitions. That a writ of mandamus was filed, and that a declaratory judgment is sought here, is of no moment. Any legal challenge to the Board’s decision was to be filed in the Supreme Court, not here. By making the Supreme Court the court of original jurisdiction, and ensuring that any such case be of “the highest priority” on that Court’s docket, the Legislature tried to ensure a prompt and final resolution to any legal

³ Plaintiff’s complaint for a writ of mandamus, ¶ 5.

challenge brought against the Board with respect to initiative petitions. To conclude otherwise would require this Court to ignore the clear commands of MCL 168.479(2).

Buttressing this conclusion is the fact that, prior to December 27, 2018, MCL 168.479 had been interpreted to permit the filing of an action for writ of mandamus in the Court of Appeals as well as in the Supreme Court. See *Citizens Protecting Michigan's Constitution v Sec'y of State*, 324 Mich App 561, 583; 922 NW2d 404 (2018). At that time, however, MCL 168.479 simply provided that: "Any person or persons, feeling themselves aggrieved by any determination made by said board, may have such determination reviewed by mandamus, certiorari, or other appropriate remedy in the supreme court." As a result, in *Citizens Protecting Michigan's Constitution*, 324 Mich App at 583, the Court of Appeals concluded that, because it had original jurisdiction over a petition for writ of mandamus against a state officer, see MCL 600.4401(1), it also had jurisdiction over an action brought pursuant to the predecessor version of MCL 168.479.

Critically, however, the amendments made to MCL 168.479 by way of 2018 PA 608 have changed the calculus. Notably, subsection (1) of MCL 168.479 now directs a litigant to the Supreme Court "*Notwithstanding any other law to the contrary* and subject to subsection (2)" of MCL 168.479 (emphasis added). By way of the inclusion of the language, "Notwithstanding any other law to the contrary," the Legislature expressed its intent to funnel all who felt aggrieved by a Board decision with respect to petition validity to one and only one Court: the Supreme Court. Subsection (2) of the statute reinforces this notion by unambiguously providing that a person aggrieved by a board of state canvassers' determination regarding the sufficiency or insufficiency of an initiative petition "*must file a legal challenge to the board's determination in the supreme court . . .*" (Emphasis added). The plain language of MCL 168.479(1) and (2), as well as its historical development, reinforces the Court's decision regarding the lack of jurisdiction. See

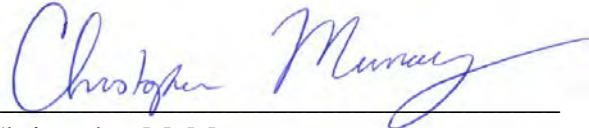
Advanta Nat'l Bank v McClarty, 257 Mich App 113, 120; 667 NW2d 880 (2003) (discussing statutory interpretation and the importance of examining changes to the pertinent statute).

Plaintiff properly pursued its challenge to the Board's decision in the Supreme Court, the Court plaintiff admitted had original jurisdiction over such a challenge. Because the Supreme Court has jurisdiction over these challenges, this Court has none and can proceed no further. *In re Acquisition of Land for the Central Indus Park Project*, 177 Mich App 11, 17; 441 NW2d 27 (1989). Plaintiff's complaint therefore has to be dismissed.

III. CONCLUSION

For the foregoing reasons, plaintiff's complaint is DISMISSED, MCR 2.116(C)(4) and MCR 2.116(I)(1), and plaintiff's motion for a temporary restraining order and/or preliminary injunction is denied as MOOT. This is a final order that closes this case.

DATE: July 20, 2020



Christopher M. Murray
Judge, Court of Claims

EXHIBIT J



STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

January 2019

**INITIATIVES AND REFERENDUMS UNDER THE CONSTITUTION
OF THE STATE OF MICHIGAN OF 1963**

Proposed Constitutional Amendments (Pages 2-6)

- Since the adoption of the State Constitution of 1963, 76 proposed amendments to the Constitution have been presented on the ballot for a vote of the people. Thirty-four of the amendments were approved and 42 were rejected.
- Of the 76 proposed amendments, 43 were placed on the ballot by the State Legislature (22 were approved and 21 were rejected) and 33 were placed on the ballot by initiative petition (12 were approved and 21 were rejected).
- In addition, the “automatic” proposal relating to the calling of a constitutional convention (Art. XII, Sec. 3, of the State Constitution) was presented in 1978, 1994 and 2010; in all three instances the proposals were rejected.

Referendums of Laws (Pages 7-8)

- Since 1963, 24 referendums have been presented on the ballot for a vote of the people. Eleven of the referendums were approved and 13 were rejected.
- Of the 24 referendums, 14 were placed on the ballot by the State Legislature (10 were approved and 4 were rejected) and 10 were placed on the ballot by petition (1 was approved and 9 were rejected).

Proposed Initiated Laws (Pages 9-10)

- Since 1963, 14 legislative initiatives have been presented on the ballot for a vote of the people. Eight of the initiatives were approved and 6 were rejected.
- Of the 14 legislative initiatives, all were placed on the ballot by petition as required by law.
- In addition to the above, the State Legislature has enacted 9 legislative proposals presented by petition during the 40-day period provided for such action. In such instances, the proposals do not appear on the ballot.

Proposed Constitutional Amendments

Subject of Proposed Constitutional Amendment	Provision to be Amended	Method of Proposal ¹	Year of Election ²	Prop.	Action	Total Vote	
						For	Against
Lower voting age to 18	Art 2 §1	SJR A	1966	1	Rejected	703,076	1,267,872
Create judicial tenure commission	Art 6 §30	HJR PP	Aug. 1968	1	Adopted	553,182	228,738
Create state officers' compensation commission	Art 4 § 12	HJR AAA	Aug. 1968	2	Adopted	417,393	346,839
Filling judicial vacancies	Art 6 §§ 20, 22-24	HJR F	Aug. 1968	3	Adopted	494,512	266,561
Allow legislators to be elected to another state office during term of office	Art 4 § 9	SJR Q	1968	5	Rejected	778,388	1,783,186
Authorize graduated income tax	Art 9 §7	SJR G	1968	1	Rejected	614,826	2,025,052
Prohibit public aid to non-public schools and students	Art 8 §2	Petition	1970	C	Adopted	1,416,838	1,078,740
Lower voting age to 18	Art 2 §1	HJR A	1970	B	Rejected	924,981	1,446,884
Authorize lotteries and lottery ticket sales	Art 4 §41	HJR V	May 1972	A	Adopted	1,352,768	506,778
Allow legislators to resign and accept another office	Art 4 §9	SJR DD	May 1972	B	Rejected	866,593	915,312
Allow trials with fewer than 12 jurors for certain misdemeanors	Art 1 §20	HJR M	Aug. 1972	A	Adopted	696,570	357,186
Cap local property taxes; establish state tax program for school funding	Art 9 §6	Petition	1972	C	Rejected	1,324,702	1,815,126
Authorize graduated income tax	Art 9 §7	Petition	1972	D	Rejected	959,286	2,102,744
Limit use of motor fuel taxes	Art 9 §9	SJR LL	1974	A	Rejected	1,091,938	1,146,109
Eliminate sales/use taxes on food and prescription drugs	Art 9 §8	Petition	1974	C	Adopted	1,337,609	1,071,253
Lower minimum age for state legislators to 18	Art 4 §7	HJR B	1976	B	Rejected	698,993	2,580,945
Cap state taxes at 8.3% of personal income	Art 9 §§25-31	Petition	1976	C	Rejected	1,407,438	1,866,620
Authorize graduated income tax	Art 9 §7	Petition	1976	D	Rejected	897,780	2,332,513

¹ "HJR" means House Joint Resolution; "SJR" means Senate Joint Resolution.

² All elections in November unless otherwise specified.

Subject of Proposed Constitutional Amendment	Provision to be Amended	Method of Proposal ¹	Year of Election ²	Prop.	Action	Total Vote	
						For	Against
Call for constitutional convention	N/A	Required by Art 12, § 3	1978	A	Rejected	640,286	2,112,549
Authorize deposit of state funds in credit unions	Art 9 §§19-20	HJR GG	1978	C	Adopted	1,819,847	933,101
Prohibit alcohol sales to persons under 21	Art 4 §40	Petition	1978	D	Adopted	1,609,589	1,208,497
Limit taxes imposed by state and local units of government (<i>Headlee Amendment</i>)	Art 9 §§6, 25-34	Petition	1978	E	Adopted	1,450,150	1,313,984
Grant state troopers the right to collective bargaining	Art 11 §5	Petition	1978	G	Adopted	1,535,023	1,203,930
Authorize vouchers for public and non-public school students	Art 9 §6 Art 8 §2	Petition	1978	H	Rejected	718,440	2,075,583
Reduce property taxes; prohibit new local programs without state funding	Art 9 §§3-3(a), 7(a)-7(b), 25(a)-26	Petition	1978	J	Rejected	1,032,343	1,737,133
Allow denial of bail for certain violent crimes	Art 1 §15	HJR Q	1978	K	Adopted	2,307,038	458,357
Allocate at least 90% of gas taxes for roads and up to 10% for other transportation purposes	Art 5 §28 Art 9 §9	HJR F	1978	M	Adopted	1,478,316	1,233,196
Create railroad redevelopment authority	Art 4 §54	HJR OO	1978	R	Rejected	1,257,606	1,415,441
Require state to provide equal per pupil funding	Art 8 §2 Art 9 §§6-6a, 26a	Petition	1980	A	Rejected	746,027	2,769,497
Lower drinking age to 19	Art 4 §40	HJR S	1980	B	Rejected	1,403,935	2,250,873
Deposit lottery revenues in school aid fund; create rainy day fund	Art 4 §§41, 54 Art 9 §§2-3, 8, 30-31	SJR X	1980	C	Rejected	894,441	2,583,253
Lower property taxes; require 60% voter approval to raise state taxes	Art 9 §§1-3, 31, 2a, 3a-3f, 33a-33b	Petition	1980	D	Rejected	1,622,301	2,051,008
Legislative immunity from civil arrest and process	Art 4 §11	SJR L	1980	G	Rejected	1,287,172	2,134,546
Filling vacancy in office of lieutenant governor	Art 4 §9 Art 5 §25-26	SJR K	1980	H	Rejected	1,410,912	1,927,001
Reduce local taxes; require lottery revenues to be deposited in school aid fund	Art 4 §41 Art 9 §§3, 8, 30-31	HJR G	May 1981	A	Rejected	560,924	1,451,305

Subject of Proposed Constitutional Amendment	Provision to be Amended	Method of Proposal ¹	Year of Election ²	Prop.	Action	Total Vote	
						For	Against
Legislative immunity from civil arrest and process	Art 4 §11	SJR A	1982	A	Adopted	1,804,728	1,029,743
Create department of state police; require minimum staffing	Art 5 §§2, 30	Petition	1982	B	Rejected	720,915	2,111,802
Elect public service commission	Art 5 §30	Petition	1982	G	Rejected	1,026,160	1,771,098
Allow legislature to approve or reject administrative rules	Art 4 §37	HJR P	1984	A	Rejected	1,280,948	1,827,677
Create natural resources trust fund	Art 9 §35	HJR M	1984	B	Adopted	2,066,554	1,120,794
Voter or legislative approval of taxes	Art 9 §§1-2	Petition	1984	C	Rejected	1,376,141	2,035,867
Create library of Michigan	Art 4 §54	HJR V	1986	A	Rejected	908,627	936,643
Allow legislature to approve or reject administrative rules	Art 4 §37	HJR W	1986	B	Rejected	648,116	1,136,721
Require commission to set attorney general and secretary of state compensation	Art 4 §12	HJR U	1986	C	Rejected	905,767	910,297
Provide for crime victims' rights	Art 1 §24	HJR P	1988	B	Adopted	2,662,796	650,515
Increase sales/use taxes to 4½%; dedicate revenue to schools	Art 4 §41 Art 9 §§8, 10-11	HJR I	1989	A	Rejected	514,407	1,341,292
Increase sales/use taxes to 6%, reduce school property taxes, and dedicate revenue to schools	Art 4 §41 Art 9 §§ 3, 5-6, 8, 10-11, 14	HJR I	1989	B	Rejected	436,958	1,392,053
Cap property tax increases; provide separate tax limitations	Art 9 §§3, 31	HJR H	1992	A	Rejected	1,433,354	2,384,777
Term limits for congressional, state executive and legislative offices	Art 2 §10 Art 4 §54 Art 5 §30 Art 12 §4	Petition	1992	B	Adopted	2,295,904	1,613,404
School property tax exemptions; cap property tax increases	Art 9 §3	Petition	1992	C	Rejected	1,552,119	2,276,360
Cap property taxes and increase sales tax	Art 4 §41 Art 9 §§3, 6, 8, 10-11	HJR G	June 1993	A	Rejected	1,008,425	1,164,468
Increase sales/use taxes from 4% to 6%; cap property tax increases; allow different school operating millage rates (<i>Proposal A</i>)	Art 9 §§3, 5, 8, 11, 36	SJR S	March 1994	A	Adopted	1,684,541	750,952
Call for constitutional convention	N/A	Required by Art 12 §3	1994	A	Rejected	777,779	2,008,070

Subject of Proposed Constitutional Amendment	Provision to be Amended	Method of Proposal ¹	Year of Election ²	Prop.	Action	Total Vote	
						For	Against
Limit appeals in criminal cases	Art 1 §20	SJR D	1994	B	Adopted	2,118,734	761,784
Create state parks endowment fund; limit use of natural resources trust fund	Art 9 §§35, 36	SJR E	1994	P	Adopted	2,007,097	806,888
Establish qualifications for judicial offices	Art 6 §19	SJR D	1996	B	Adopted	2,806,833	629,402
Create veterans' trust fund	Art 9 §§37-39	HJR H	1996	C	Adopted	2,447,905	849,525
Replace "handicapped" with "disabled"	Art 8 §8	SJR I	1998	A	Adopted	1,708,873	1,181,138
Authorize indirect support of non-public school students	Art 8 §§2, 10	Petition	2000	00-1	Rejected	1,235,533	2,767,320
Require ² / ₃ vote to enact laws affecting local governments	Art 4 §55	Petition	2000	00-2	Rejected	1,242,516	2,548,995
Changes to state officers' compensation commission	Art 4 §12	HJR E	Aug. 2002	02-1	Adopted	1,057,503	404,682
Authorize spending for state and local parks and outdoor recreation	Art 9 §§19, 35, 36, 37	SJR T	Aug. 2002	02-2	Adopted	925,475	565,971
Grant state employees collective bargaining rights	Art 11 §5	Petition	2002	02-3	Rejected	1,336,249	1,591,756
Allocate tobacco settlement funds	Art 9 §36	Petition	2002	02-4	Rejected	1,018,644	2,011,105
Require voter approval of new gambling and lottery games	Art 4 §41	Petition	2004	04-1	Adopted	2,689,448	1,926,721
Specify what can be recognized as a "marriage or similar union"	Art 1 §25	Petition	2004	04-2	Adopted	2,698,077	1,904,319
Conservation/recreation funds	Art 9 §§40-42	HJR Z	2006	06-1	Adopted	2,915,106	680,859
Ban affirmative action programs	Art 1 §26	Petition	2006	06-2	Adopted	2,141,010	1,555,691
Restrict use of eminent domain	Art 10 §2	SJR E	2006	06-4	Adopted	2,914,214	724,573
Regulate stem cell research	Art 1 §27	Petition	2008	08-02	Adopted	2,521,026	2,271,083
Call for constitutional convention	N/A	Required by Art 12 §3	2010	10-1	Rejected	983,019	1,960,573
Ban certain felons from public offices	Art 11 §8	SJR V	2010	10-2	Adopted	2,270,6-57	760,586
Collective bargaining rights for all workers	Art 1 §28 Art 11 §5	Petition	2012	12-2	Rejected	1,949,513	2,626,731
Renewable energy mandate	Art 4 §55	Petition	2012	12-3	Rejected	1,721,279	2,842,000
Create home care council	Art 5 §31 Art 11 §5	Petition	2012	12-4	Rejected	1,985,595	2,550,420

Subject of Proposed Constitutional Amendment	Provision to be Amended	Method of Proposal ¹	Year of Election ²	Prop.	Action	Total Vote	
						For	Against
Require supermajority vote for new taxes	Art 9 §26a	Petition	2012	12-5	Rejected	1,410,944	3,105,649
Require voter approval to construct international bridges	Art 3 §6a	Petition	2012	12-6	Rejected	1,853,127	2,699,558
Increase sales and use taxes to 7% and increase gas tax and vehicle registration fees; dedicate revenue to transportation purposes	Art 9 §§8, 10, 11	HJR UU	May 2015	15-1	Rejected	349,862	1,406,019
Create independent citizens redistricting commission	Art 4 §§1-6 Art 5 §§1-2, 4 Art 6 §§1, 4	Petition	2018	18-2	Adopted	2,522,355	1,593,556
Allow election day voter registration, no-reason absentee voting and straight party voting	Art 2 §4	Petition	2018	18-3	Adopted	2,777,998	1,373,636

Referendum of Laws

Subject of Referendum	Method	Date of Election ³	Prop.	Action	Total Vote	
					For	Against
Act 240 of 1964, prohibiting straight party ticket voting	Referendum Petition	1964	C	Rejected	795,546	1,515,875
Act 6 of 1967, establishing daylight saving time	Referendum Petition	1968	2	Rejected	1,402,562	1,403,052
Act 76 of 1968, authorizing bonds for water pollution abatement	Legislation	1968	3	Adopted	1,906,385	796,079
Act 257 of 1968, authorizing bonds for public recreation programs and facilities	Legislation	1968	4	Adopted	1,384,254	1,235,681
Act 304 of 1969, authorizing bonds for low-income housing	Legislation	1970	A	Rejected	921,482	1,388,737
Act 231 of 1972, authorizing bonds for bonus payments to and educational benefits for veterans	Legislation	1972	E	Rejected	1,490,968	1,603,203
Act 106 of 1974, authorizing bonds for bonus payments to veterans	Legislation	1974	B	Adopted	1,668,641	700,041
Act 245 of 1974, authorizing bonds for transportation purposes	Legislation	1974	D	Rejected	963,576	1,319,586
Act 250 of 1980, increasing the state income tax 0.1% for 5 years for correctional facilities and programs	Legislation	1980	E	Rejected	1,288,999	2,202,042
Act 212 of 1982, prohibiting utility rate increases without notice and hearing	Legislation	1982	H	Adopted	1,670,381	1,131,990
Act 59 of 1987, prohibiting use of public funds for abortions	Referendum Petition	1988	A	Adopted	1,959,727	1,486,371
Act 326 of 1988, authorizing bonds for environmental protection programs	Legislation	1988	C	Adopted	2,528,109	774,451
Act 327 of 1988, authorizing bonds to finance state and local recreation projects	Legislation	1988	D	Adopted	2,055,290	1,206,465
Act 143 of 1993, reducing auto insurance rates and limiting personal injury benefits	Referendum Petition	1994	C	Rejected	1,165,732	1,812,526
Act 118 of 1994, amending the Michigan Bingo Act	Referendum Petition	1996	A	Rejected	1,511,063	1,936,198
Act 377 of 1996, providing for wildlife management	Legislation	1996	G	Adopted	2,413,730	1,099,262
Act 284 of 1998, authorizing bonds for natural resources and environmental programs	Legislation	1998	C	Adopted	1,821,006	1,081,988

³ All elections in November unless otherwise specified.

Subject of Referendum	Method	Date of Election ³	Prop.	Action	Total Vote	
					For	Against
Act 269 of 2001, eliminating straight party voting and making other changes to election law	Referendum Petition	2002	02-1	Rejected	1,199,236	1,775,043
Act 396 of 2002, authorizing bonds for sewage treatment and water pollution projects	Legislation	2002	02-2	Adopted	1,774,053	1,172,612
Act 160 of 2004, establishing a mourning dove hunting season	Referendum Petition	2006	06-3	Rejected	1,137,379	2,534,680
Act 4 of 2011, authorizing emergency managers to address local financial emergencies	Referendum Petition	2012	12-1	Rejected	2,130,354	2,370,601
Act 408 of 2012, reducing the state use tax and replacing it with a local community stabilization share	Legislation	Aug. 2014	14-1	Adopted	863,459	382,770
Act 520 of 2012, establishing a wolf hunting season	Referendum Petition	2014	14-1	Rejected	1,318,080	1,606,328
Act 21 of 2013, authorizing commission to designate animals as game without legislative action	Referendum Petition	2014	14-2	Rejected	1,051,426	1,856,603

Proposed Initiated Laws

Subject of Proposed Initiated Law	Date of Election ⁴	Prop.	Action	Total Vote	
				For	Against
Allow abortions if period of gestation has not exceeded 20 weeks	1972	B	Rejected	1,270,416	1,958,265
Repeal Act 6 of 1967, establishing daylight saving time	1972	A	Adopted	1,754,887	1,460,724
Prohibit nonreturnable beverage containers and require refundable cash deposits for returnable containers (<i>Bottle bill</i>)	1976	A	Adopted	2,160,398	1,227,254
Revise standards for parole and prohibit parole for certain crimes until court-ordered minimum sentence is served	1978	B	Adopted	2,075,599	711,262
Prohibit lender from using a “due on sale” clause in foreclosure proceedings on a mortgage or land contract	1982	C	Rejected	1,344,463	1,445,897
Prohibit utility rate increases without notice or hearing	1982	D	Adopted	1,472,442	1,431,884
Urge nuclear weapons freeze between the US and USSR	1982	E	Adopted	1,585,809	1,216,172
Amend auto insurance laws	1992	D	Rejected	1,482,577	2,480,032
Limit bear hunting season; ban use of bait and dogs to hunt bear	1996	D	Rejected	1,379,340	2,225,675
Authorize casino gaming in qualified cities	1996	E	Adopted	1,878,542	1,768,156
Allow prescription of a legal dose of medication to terminally ill adults in order to commit suicide	1998	B	Rejected	859,381	2,116,154
Establish mandatory school funding levels	2006	06-5	Rejected	1,366,355	2,259,247
Authorize marijuana use and cultivation for medical purposes	2008	08-1	Adopted	3,006,820	1,790,889
Authorize marijuana retail sales, use and consumption by persons over 21	2018	18-1	Adopted	2,356,422	1,859,675

⁴ All elections in November unless otherwise specified.

Initiated Laws Adopted by State Legislature

Subject of Initiated Law	Legislative Action
Prohibit use of public funds to pay for abortions	Adopted by Legislature, 1987 PA 59
Require parental consent for abortions	Adopted by Legislature, 1990 PA 211
Define legal birth and legal personhood	Adopted by Legislature, 2004 PA 135
Repeal 1975 PA 228, the Single Business Tax Act	Adopted by Legislature, 2006 PA 325
Enact Abortion Insurance Opt-Out Act	Adopted by Legislature, 2013 PA 182
Require sound scientific management of fish and wildlife	Adopted by Legislature, 2014 PA 281
Repeal 1965 PA 166, the Prevailing Wages and Fringe Benefits Act	Adopted by Legislature, 2018 PA 171
Increase minimum wage rate for tipped and non-tipped workers	Adopted by Legislature, 2018 PA 337
Require employers to provide paid sick leave	Adopted by Legislature, 2018 PA 338

EXHIBIT K

STATE OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL

CONST 1963, ART 1, § 5:

Constitutionality of 2018 PA 608,
amending Michigan Election Law.

CONST 1963, ART 2, § 9:

CONST 1963, ART 12, § 2:

US CONST, AM I:

The Legislature exceeded its constitutional authority under article 2, § 9 and article 12, § 2 of the Michigan Constitution in enacting a 15% signature distribution requirement based on congressional district, and the amendments to MCL 168.471, 168.477, and 168.482(4) are unconstitutional, but may be severed from the remainder of 2018 PA 608.

Petitions to initiate legislation or a referendum, and petitions to amend the Constitution, may be circulated on a city-township petition form under MCL 168.482(4), or a countywide form under MCL 168.544d.

Subsection 7 of MCL 168.482, and MCL 168.482c, as amended by 2018 PA 608, requiring the disclosure of the paid or voluntary status of petition circulators on the face of a petition, violate the speech clause of the Michigan Constitution and the U.S. Constitution, but may be severed from the remainder of 2018 PA 608.

Subsections 1 and 2 of MCL 168.482a, as amended by 2018 PA 608, requiring paid circulators to file an affidavit before circulating petitions, violate the speech clause of the Michigan Constitution and the U.S. Constitution and are unconstitutional, but may be severed from the remainder of 2018 PA 608.

Subsection 3 of MCL 168.482a, as amended by 2018 PA 608, requiring the invalidation of signatures on petition sheets containing false or fraudulent information supplied by the circulator, does not violate the speech clause of the Michigan Constitution or the U.S. Constitution.

Subsection 4 of MCL 168.482a, as amended by 2018 PA 608, requiring the invalidation of signatures on a petition sheet that do not comply with a mandatory form or content requirement, does not violate the speech clause of the Michigan Constitution or the U.S. Constitution.

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Subsection 5 of MCL 168.482a, as amended by 2018 PA 608, requiring the invalidation of signatures that were not signed in the presence of the circulator of the petition sheet, does not violate the speech clause of the Michigan Constitution or the U.S. Constitution.

Subsection 1 of MCL 168.482b, as amended by 2018 PA 608, providing an approval process for the summary of a ballot proposal, does not violate article 2, § 9 of the Michigan Constitution.

The Director of Elections and the Board of State Canvassers are authorized to draft and approve a statement of purpose for a statewide ballot proposal that differs from the summary of the proposal previously approved by the Board under § 482b(1), as amended by 2018 PA 608.

Subsection 2 of MCL 168.479, as amended by 2018 PA 608, requiring a person to file a legal challenge regarding a determination as to the sufficiency of an initiative or referendum petition in the Michigan Supreme Court, does not violate article 6, § 4 of the Michigan Constitution.

Subsection 2 of MCL 168.479, as amended by 2018 PA 608, requiring the Michigan Supreme Court to accord highest priority to cases challenging the sufficiency of petitions, violates the separation of powers clause of the Michigan Constitution and is unconstitutional, but may be severed from the remainder of 2018 PA 608.

Opinion No. 7310

May 22, 2019

The Honorable Jocelyn Benson
Secretary of State
Richard H. Austin Building
430 W. Allegan Street
Lansing, MI 48909

You have asked six questions regarding the constitutionality of 2018 PA 608, which amended the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq.*, to impose additional requirements and limitations on persons seeking to circulate

petitions to initiate legislation, to invoke the right of referendum, and to amend the Michigan Constitution.¹

Background

Public Act 608 was introduced as House Bill 6595 on December 6, 2018.² It passed the House, as substituted, on December 12, 2018, by a vote of 60 to 49, and was given immediate effect.³ The Senate made several amendments and passed a substituted bill on December 21, 2018, by a vote of 26 to 12, and gave the bill immediate effect.⁴ The bill was returned to the House the same day, where the Senate substitute was concurred in and passed on a 57 to 47 vote. Then Governor Rick Snyder signed the bill on December 28, 2018, and it became immediately effective.⁵

Legal principles

When addressing a constitutional challenge to a statute, the statute is “presumed to be constitutional” and there is a “duty to construe [the] statute as constitutional unless its unconstitutionality is clearly apparent. Further, when considering a claim that a statute is unconstitutional . . . the wisdom of the

¹ This office received written comments from Samuel R. Bagenstros and Sharon Dolente on behalf of the American Civil Liberties Union Fund of Michigan, and from Patrick Anderson.

² See [http://www.legislature.mi.gov/\(S\(vcpxxi2t1ljspspqg3rkmk0d\)\)/mileg.aspx?page=getObject&objectName=2018-HB-6595](http://www.legislature.mi.gov/(S(vcpxxi2t1ljspspqg3rkmk0d))/mileg.aspx?page=getObject&objectName=2018-HB-6595) (last accessed May 20, 2019).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

legislation” is not part of the inquiry. *Taylor v Smithkline Beecham Corp*, 468 Mich 1, 6 (2003) (citations omitted). “[I]t is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution” that the statute’s validity will not be sustained. *Phillips v Mirac, Inc*, 470 Mich 415, 423 (2004) (quotation marks and citations omitted).

Because the statutes amended or added by Public Act 608 have yet to be applied or enforced as to any person or entity, this office is limited to conducting a facial review of their constitutionality.⁶ Generally, a statute will fail to withstand facial review only if “ ‘no set of circumstances exists under which the [statute] would be valid’ ” and “ ‘[t]he fact that the . . . [statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient’ ” to render it invalid. *Council of Organizations & Others for Educ About Parochiaid, Inc v Governor*, 455 Mich 557, 568 (1997), quoting *United States v Salerno*, 481 US 739, 745 (1987). Indeed, “ ‘[i]f any state of facts reasonably can be conceived that would sustain [a legislative act], the existence of the state of facts at the time the law was enacted must be assumed’ ” and the statute upheld. *Id.* But this deference is diminished with respect to facial challenges raising First Amendment issues. As the Sixth Circuit Court of Appeals has recognized, courts “rightly lighten this load in the

⁶ Moreover, the opinions process is generally confined to answering questions of law, not the resolution or finding of facts. MCL 14.32; *Michigan Beer & Wine Wholesalers Ass’n v Attorney General*, 142 Mich App 294, 300–302 (1985), cert den 479 US 939 (1986).

context of free-speech challenges to the facial validity of a law.” *Connection Distrib Co v. Holder*, 557 F3d 321, 335 (CA 6, 2009)(en banc).

Analysis of Questions

Question 1

In Michigan, the people have retained for themselves the power to initiate or refer legislation and to propose constitutional amendments that, if certain requirements are met, may be placed on the ballot and voted on by the people. Const 1963, art 2, § 9; art 12, § 2. Your first question relates to amendments of MCL 168.471, 168.477, and 168.482(4). These statutes, as amended by Public Act 608, impose a signature-distribution requirement regarding initiative and referendum petitions circulated under article 2, § 9 and petitions to amend the Constitution circulated under article 12, § 2.⁷

A. Signature-distribution requirement

As amended by Public Act 608, MCL 168.471 now limits the number of petition signatures that may be counted from any one congressional district:

Not more than 15% of the signatures to be used to determine the validity of a petition described in this section shall be of registered electors from any 1 congressional district. Any signature submitted on a petition above the limit described in this section must not be counted.

⁷ Of the 24 states that permit initiatives or referendums, 17 have some form of signature distribution requirement, most of which are provided for in that state’s constitution. See Alaska Const, art 11, § 3; Ark Const, art 5, § 1; Colo Const, art 5, § 1; Fla Const, art 11, § 3; Idaho Code Ann § 34-1805, Md Const, art 16, § 3; Mass Const, art XLVIII, Part VI, General Provisions, § 2; Mo Const, art 3, §§ 50, 52a; Miss Const, art 15, § 273(3); Mont Const, art 3, § 4; Neb Const, art 11, § 2; Nev Const, art 19, § 2; NM Const, art 4, § 1; Ohio Const, art 2, § 1g; Utah Code Ann, § 20A-7-201(a)(ii); Wyo Const, art 3, § 52. Various courts have addressed the constitutionality of distribution requirements. See *Semple v Williams*, 290 F Supp 3d 1187, 1193-1194 (D Colo, 2018) (collecting cases).

When filing a petition described in this section with the secretary of state, a person must sort the petition so that the petition signatures are categorized by congressional district. In addition, when filing a petition described in this section with the secretary of state, the person who files the petition must state in writing a good-faith estimate of the number of petition signatures from each congressional district. [Emphasis added.]

Michigan is currently divided into 14 congressional districts, all of which span multiple counties, except for District 13, which includes only Wayne County. See 2011 PA 128.

Consistent with this amendment, MCL 168.477 was amended to provide that the Board of State Canvassers⁸ “may not count toward the sufficiency of a petition described in this section any valid signature of a registered elector from a congressional district submitted on that petition that is above the 15% limit described in section 471.”

In keeping with these changes, the Legislature also specified the use of a different petition format for circulating these petitions. MCL 168.482(4) was amended to require that petitions be circulated on a congressional district form:

The following statement must appear beneath the petition heading:

“We, the undersigned qualified and registered electors, residents in the _____ *congressional district* in the state of Michigan, respectively petition for (amendment to constitution) (initiation of legislation) (referendum of legislation) (other appropriate description).” [Emphasis added.]

⁸ The Board of State Canvassers is a constitutional board created by the Michigan Constitution, Const 1963, art 2, § 7, and its duties and responsibilities are established by law, MCL 168.22(2) and MCL 168.841. The Board is charged with performing various duties relating to the canvass of petitions filed under article 2, § 9 and article 12, § 2. See, e.g., MCL 168.475, 168.476, 168.477.

Sponsors of initiative petitions must obtain signatures from registered electors totaling 8% (now 340,047) of the total votes cast for all candidates for governor at the last preceding general election. Const 1963, art 2, § 9. Referendum sponsors must obtain signatures from 5% (now 212,530) of registered electors. *Id.* And sponsors of petitions to amend the Constitution must obtain signatures from registered electors totaling 10% (now 425,059) of the total votes cast for all candidates for governor at the last preceding general election. Const 1963, art 12, § 2.

Before the amendments, these petitions were generally circulated countywide and there was no limit on how many signatures could be collected from any one county. Depending on the size of a county,⁹ a petition sponsor could theoretically collect all 340,047 signatures required for an initiative petition from one county. But under the amendments, no more than 15%—now 51,007 signatures—from any one of the 14 congressional districts may be counted in support of the petition.¹⁰ The 15% limitation therefore has the effect of requiring a sponsor to obtain signatures from roughly half of Michigan’s 14 congressional districts.¹¹ Proponents of the legislative amendments argued that a “maximum percentage from each congressional district would ensure that petitions destined for the ballot were

⁹ The population of Michigan’s 83 counties varies widely. See <http://www.senate.michigan.gov/sfa/Economics/MichiganPopulationByCounty.PDF>.

¹⁰ Fifteen percent of 340,047 is 51,007.05.

¹¹ Michigan election law requires candidates running for certain elected offices to obtain signatures on nominating petitions from “at least ½ of the congressional districts of the state.” See MCL 168.53, 168.93.

supported by a more representative geographic cross-section of Michiganders[.]”
House Fiscal Analysis, HB 6595, December 13, 2018, p 2.¹²

B. Constitutionality of amendments

You ask whether these amendments are constitutional under article 2, § 9 and article 12, § 2 of the Michigan Constitution.

Article 2, § 9, regarding initiatives and referendums, provides in relevant part:

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. . . . *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*.

* * *

The legislature shall implement the provisions of this section.
[Emphasis added.]

The plain language of § 9 does not include a distribution component with respect to signatures. In other words, § 9 does not *limit* the number of signatures that can be counted from any particular geographic region or political subdivision in Michigan, nor does it *require* that petitions be signed by a certain number of registered electors in different geographic or political subdivisions. Rather, “[t]o

¹² The analysis is available at <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6595-718A3730.pdf> (last accessed May 20, 2019).

invoke the initiative or referendum” process only a specific percentage of signatures of registered electors in the State of Michigan “shall be required.”

Article 12, § 2, regarding petitions to amend the Constitution, similarly does not contemplate geographic dispersion of supporting signatures:

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

Like article 2, § 9, article 12, § 2 does not limit the number of signatures collected from any one geographic region or political subdivision in order to obtain the required 10%. Rather, only a specific percentage of signatures of registered electors in the State of Michigan is required.

The question then is whether the Legislature was authorized to “implement” under article 2, § 9 or to “prescribe[]” under article 12, § 2, the 15% signature distribution limitation.

When interpreting the Constitution, the primary duty is to “ascertain . . . the general understanding and therefore the uppermost or dominant purpose of the people when they approved the provision or provisions.” *Michigan Farm Bureau v Sec’y of State*, 379 Mich 387, 390–391 (1967). A constitutional provision must be

interpreted in the “sense most obvious to the common understanding.” *House Speaker v Governor*, 443 Mich 560, 577 (1993). One may also consider the circumstances surrounding the adoption of the provision, which may include consideration of the constitutional convention record and reference to existing law and custom at the time of the Constitution’s adoption. *Id.* at 580–581.

Moreover, there is an overriding rule of constitutional construction that requires that the referendum process “forming as it does a specific power the people themselves have expressly reserved, be saved if possible as against conceivable if not likely evasion or parry by the legislature.” *Michigan Farm Bureau*, 379 Mich at 393. Thus, “constitutional provisions by which the people reserve to themselves a direct legislative voice ought to be liberally construed.” *Kuhn v Dep’t of Treasury*, 384 Mich 378, 385 (1971); *Farm Bureau Mutual Ins Co of Michigan v Comm’r of Ins*, 204 Mich App 361, 367 (1994).

In *Wolverine Golf Club v Sec’y of State*, the Michigan Supreme Court addressed whether a statute “requiring initiative petitions to be filed not less than 10 days before the start of a legislative session [was] a constitutionally permissible implementation of” article 2, § 9. 384 Mich 461, 465–467 (1971). The Court determined that the statute drew its viability from the 1908 Constitution, and that the relevant provision no longer appeared in § 9. As a result, the Court could “not regard this statute as an implementation of the provision of Const 1963, art 2, § 9.” *Id.* at 466. The Court “read the stricture of that section, ‘the legislature shall implement the provisions of this section,’ as a directive to the legislature to

formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate. This constitutional procedure is self-executing.” Id.

(emphasis added). Citing other precedents, the Court continued:

It is settled law that the legislature may not act to impose additional obligations on a self-executing constitutional provision.

“The only limitation, unless otherwise expressly indicated, on legislation supplementary to self-executing constitutional provisions is that the right guaranteed shall not be curtailed or any undue burdens placed thereon”.

Whether we view the ten day filing requirement in an historical context or as a question of constitutional conflict, the conclusion is the same—the requirement restricts the utilization of the initiative petition and lacks any current reason for so doing. [*Id.* (citations omitted; internal quotations omitted).]

Accordingly, the Court in *Wolverine Golf Club* held the statute unenforceable.

Id. at 466–467.

A similar result is compelled here under article, 2, § 9. The Legislature’s authority in § 9 to “implement” that section is limited to “formulat[ing] the *process* by which initiative petitioned legislation shall reach the legislature or the electorate.” *Id.* at 466 (emphasis added). The Legislature cannot impose an additional obligation that does not appear in article 2, § 9 and that curtails or unduly burdens the people’s right of initiative and referendum.

Here, the 15% distribution requirement goes beyond a process requirement to impose a substantive limitation on the number of voters within a congressional district whose signatures may be counted under article 2, § 9. Yet § 9 only requires

petition sponsors to obtain a specific percentage of signatures from registered electors anywhere in the State of Michigan in order to invoke the right of initiative and referendum. The plain language of article 2, § 9 cannot be interpreted to authorize the Legislature's imposition of the 15% distribution requirement added by 2018 PA 608.

Turning to article 12, § 2, this section provides that petitions to amend the Constitution “shall be in the form, and shall be signed and circulated in such manner, as prescribed by law.” Const 1963, art 12, § 2. This language “clearly authorizes the Legislature to prescribe by law for the *manner* of signing and circulating petitions to propose constitutional amendments.” *Consumers Power Co v Attorney General*, 426 Mich 1, 6 (1986) (emphasis added). See also *Citizens for Capital Punishment v Secretary of State*, 414 Mich 913, 914–915 (1982). Even so, in a recent challenge to a petition to amend the Constitution, the Michigan Supreme Court cautioned against allowing interference with legislative petitions under the guise of setting procedure:

While the right to propose amendments by initiative must be done according to constitutional requirements, we have observed that “it may be said, generally, that [the right] can be interfered with neither by the legislature, the courts, nor the officers charged with any duty in the premises.” Indeed, we have held that Article 12, § 2 is self-executing, although the Constitution explicitly allows the Legislature to prescribe by law *procedures* regulating the initiative. [*Citizens Protecting Michigan's Constitution v Sec'y of State*, 503 Mich 42, 63 (2018) (emphasis added) (footnotes omitted).]

And this understanding is supported by the 1963 Constitution's Address to the People with regards to article 12, § 2 , which states that “[d]etails as to form of

petitions, their circulation and other elections *procedures* are left to the determination of the legislature[.]” 2 Official Record, Constitutional Convention 1961, p 3407 (emphasis added).¹³ See also, OAG, 1963-1964, No. 4285, p 289 (February 20, 1964).

Of course, in *Consumers Power Co* the Michigan Supreme Court determined that a statute could create a rebuttable presumption that petition signatures were stale after 180 days concluding that the statute was within the Legislature’s authority:

[T]he Legislature has followed the dictates of the constitution in promulgating MCL 168.472a []. The statute sets forth a requirement for the signing and circulating of petitions, that is, that a signature which is affixed to a petition more than 180 days before that petition is filed with the Secretary of State is rebuttably presumed to be stale and void. The purpose of the statute is to fulfill the constitutional directive of art 12, § 2 that only the registered electors of this state may propose a constitutional amendment. [426 Mich at 7–8.]

However, unlike the statute in *Consumers Power Co* that created a rebuttable presumption regarding the validity of signatures, the 15% distribution requirement imposes an absolute limitation, which denies many registered electors the right to have their signatures counted—a limitation without any basis in the language of article 12, § 2. As a result, the amendments imposing the 15% distribution requirement are unconstitutional under article 12, § 2.

¹³ To ascertain the purpose sought to be accomplished by a constitutional provision, the “Address to the People” may be consulted. *Regents of the Univ of Michigan v State*, 395 Mich 52 (1975).

C. Severability of the amendments

Having concluded that the amendments to §§ 471, 477, and 482(4) of Public Act 608 are unconstitutional, it is necessary to determine whether the offending provisions may be severed from the remainder of Public Act 608.

Public Act 608 does not specifically address severability. Nevertheless, the Legislature has generally provided for the severability of invalid statutes in MCL 8.5, which states that “[i]f any portion of an act . . . shall be found to be invalid . . . such invalidity shall not affect the remaining portions . . . of the act which can be given effect without the invalid portion . . . provided such remaining portions are not determined . . . to be inoperable[.]” See also *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 346 (2011); *People v McMurchy*, 249 Mich 147, 158 (1930) (when one part of a statute is held unconstitutional, the remainder of the statute remains valid unless all parts of the statute are so interconnected that the Legislature would likely not have passed the one part without the other).

In this case, except as noted in relation to Question 2, below, the amendments to §§ 471, 477, and 482(4) were insular and discrete additions to these statutes, and they may be struck from the Act, leaving the remaining portions operable and in effect.

It is my opinion, therefore, that the Legislature exceeded its constitutional authority under article 2, § 9 and article 12, § 2 of the Michigan Constitution in

enacting a 15% signature distribution requirement based on congressional districts, and the amendments to MCL 168.471, 168.477, and 168.482(4) are unconstitutional, but may be severed from the remainder of 2018 PA 608.¹⁴

Question 2

Your next question concerns amendments to MCL 168.544d. Previously, section 544d provided that “petitions for a constitutional amendment, initiation of legislation, or referendum of legislation or a local proposal may be circulated on a countywide form.” In Public Act 608, however, the Legislature deleted the reference to the initiative and referendum petitions so that the section now provides:

Nominating petitions for the offices under this act and petitions for a local proposal may be circulated on a countywide form. Petitions circulated countywide must be on a form prescribed by the secretary of state, which form must be substantially as provided in sections 482, 544a, or 544c, whichever is applicable. The secretary of state may provide for a petition form larger than 8-1/2 inches by 13 inches and shall provide for identification of the city or township in which the person signing the petition is registered. The certificate of the circulator may be on the reverse side of the petition. This section does not prohibit the circulation of petitions on another form prescribed by this act. [MCL 168.544d, as amended by 2018 PA 608.]

As a result of the amendment, § 544d no longer expressly provides for the circulation of petitions to amend the Constitution, to initiate legislation, or for a referendum, to be circulated on a countywide form. This amendment was presumably made as part of the 15% signature distribution limitation, which required these petitions to be circulated within a congressional district.

¹⁴ Because these amendments are unconstitutional under the Michigan Constitution, it is unnecessary to address whether they violate federal law or the U.S. Constitution.

You ask whether you “retain the authority to prescribe a substantially compliant, congressional district-based form for statewide ballot proposals.”

As discussed above in question one, the amendments limiting the number of signatures that may be counted from each congressional district and requiring the use of a congressional district petition form are unconstitutional. With those amendments stricken, the question becomes whether the Legislature would still have intended to preclude the use of countywide petition forms for initiating petitions to amend the Constitution, to initiate legislation, or for a referendum, as previously permitted by § 544d. In other words, it must be determined whether barring the use of countywide forms would be consistent with the “manifest intent of the Legislature.” See *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich at 346; *McMurphy*, 249 Mich at 158.

Here, the central purpose for removing the option of using countywide forms for initiatives and referendums appears to have been to effectuate the new requirement that these initiatives be circulated on a congressional district petition form. See MCL 168.482(4). With the district-level requirements no longer applicable, precluding the option of using countywide forms is no longer consistent with the Legislature’s intent. Therefore the amendment to § 544d cannot be severed from the changes to §§ 471, 477, and 482(4).

As a result, the previous versions of § 482(4) and § 544(d) would continue to apply. See, e.g., *Frost v Corporation Comm*, 278 US 515, 526–528 (1929)

(unconstitutional amendment of statute was a nullity, “leaving the provisions of the existing statute unchanged”); *Campau v Detroit*, 14 Mich 276, 286 (1886); *Fillmore v Van Horn*, 129 Mich 52 (1901). Subsection 482(4) previously provided for circulation of these petitions within a city or township, i.e., on a city-township petition form. Section 544d allowed countywide forms. Since the previous language applies again, petitions to initiate or refer legislation or to amend the Constitution may be circulated on a city-township petition form, and on a countywide form under § 544d.

It is my opinion, therefore, that petitions to initiate legislation or a referendum, and petitions to amend the Constitution, may be circulated on a city-township petition form under MCL 168.482(4) or on a countywide form under MCL 168.544d.

Questions 3 and 6

In questions 3 and 6 you raise concerns relating to new requirements regarding the form of petitions and circulation requirements. 2018 PA 608, §§ 482 482a, 482c. You ask whether these provisions are constitutional.

A. Check-box requirement

The form of a petition to initiate or refer legislation or to amend the Constitution is generally provided for in MCL 168.482. Public Act 608 amended MCL 168.482 by adding subsection 7, which requires that “[e]ach petition under this section must provide at the top of the page *check boxes* and *statements* to clearly

indicate whether the circulator of the petition *is a paid signature gatherer or a volunteer signature gatherer.*” (Emphasis added.)¹⁵

Given its nature, this statute is best analyzed under the speech clause of the Michigan Constitution and the U.S. Constitution. Const 1963, art 1, § 5; US Const, Am I.

In *Woodland v Michigan Citizens Lobby*, the Michigan Supreme Court clarified that the state’s speech and association clauses, article 1, §§ 3 and 5, applied to the “individual right to solicit signatures” for petitions. 423 Mich 188, 215 (1985). The free speech rights guaranteed by article 1, § 5 have been interpreted as coterminous with those of the First Amendment, and Michigan courts have applied First Amendment jurisprudence in analyzing speech rights under the Michigan Constitution. *Id.* at 202; *Michigan Up & Out of Poverty Now Coal v State*, 210 Mich App 162, 168–69 (1995).

In the seminal case *Meyer v Grant*, the U.S. Supreme Court expressly held that “[t]he circulation of an initiative petition” is “core political speech” that “involves both the expression of a desire for political change and a discussion of the merits of the proposed change.” 486 US 414, 421–22 (1988). See also *John Doe No. 1 v Reed*, 561 US 186, 195 (2010) (“the expression of a political view [by the signor of a petition] implicates a First Amendment right”). But the Court has also recognized

¹⁵ Public Act 608 defined a “paid signature gatherer” in MCL 168.482d as “an individual who is compensated, directly or indirectly, through payments of money or other valuable consideration to obtain signatures on a petition.”

that “there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Storer v Brown*, 415 US 724, 730 (1974); see *Buckley v American Constitutional Law Found, Inc (ACLF)*, 525 US 182, 187 (1999); *Timmons v Twin Cities Area New Party*, 520 US 351, 358 (1997); *Anderson v Celebrezze*, 460 US 780, 788 (1983). “States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally.” *ACLF*, 525 US at 191. And Michigan’s Constitution expressly provides that the Legislature “shall enact laws to regulate the time, place, and manner of all nominations and elections, to preserve the purity of elections,” and to “guard against abuses of the elective franchise[.]” Const 1963, art 2, § 4(2).

In apparent exercise of that authority, the Michigan Legislature amended section 482, adding subsection 7, which requires that a petition form contain check boxes for the circulator to mark, designating his or her status as either a paid or voluntary circulator. 2018 PA 608, § 482(7).¹⁶ Section 482c was also added, providing that the “circulator of a petition under section 482 who knowingly makes a false statement concerning his or her status as a paid signature gatherer or volunteer signature gatherer is guilty of a misdemeanor.” 2018 PA 698, § 482c. As a result, the face of a petition circulated under § 482 now raises the issue of whether

¹⁶ The State of Arizona has virtually the same requirement. See Az St § 19-102(B)–(D). Other states have similar requirements requiring disclosure of the circulator’s paid or voluntary status. See Ca Elec Code § 101; Mo St §§ 116.080(1), 116.040; Ne St § 32-628(4); Oh St § 3519.05; Or St §§ 250.045, 250.052(1); Wy St § 22-24-310.

the circulator is paid or a volunteer, and a circulator who knowingly marks the wrong check box is guilty of a misdemeanor.¹⁷

The U.S. Supreme Court has decided “a series of precedents considering First Amendment challenges to disclosure requirements in the electoral context. These precedents have reviewed such challenges under what has been termed ‘exacting scrutiny.’” *John Doe No. 1*, 561 US at 196 (citations omitted). “That standard ‘requires a “substantial relation” between the disclosure requirement and a “sufficiently important” governmental interest.’” *Id.* (citations omitted). “To withstand this scrutiny, ‘the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.’” *Id.* (citations omitted).

The legislative history for Public Act 608 does not reveal either the purpose for enacting the check-box requirement or the concern that the amendment was intended to address. The U.S. Supreme Court has observed that disclosure requirements can provide “the electorate with information about the sources of election-related spending” and “help citizens make informed choices in the political marketplace.” *Citizens United*, 558 US at 367. See also *Buckley v Valeo*, 424 US 1, 66 (1976) (disclosure provides the electorate with information “as to where political

¹⁷ While the statute requires that the form contain these check boxes, and further requires that the check boxes must be completed at the time the petition is submitted, there is no explicit requirement in the statute that the check boxes be completed at the time the petitions are circulated. Nevertheless, the inclusion of the new language on the form raises the issue of the circulator’s volunteer or paid status when the form is presented for signature and invites inquiry if not completed at the time prior to or during the interaction between the circulator and the elector.

campaign money comes from and how it is spent,” thus aiding electors in evaluating who seeks their vote) (internal quotation marks omitted).

With respect to the use of paid circulators, the U.S. Supreme Court has addressed the validity of various disclosure requirements. In *ACLF*, the Court addressed both a requirement that circulators wear badges, which included their name and status as a paid or voluntary circulator, and a requirement that circulators complete an affidavit section of the petition that included the circulator’s name, address, and signature. 525 US at 197–198. Recognizing the badge requirement as different in kind from the affidavit, the Court upheld the affidavit requirement, but held that the badge requirement violated Free Speech principles because it worked to discourage political expression at the crucial moment in the petition process.

The Court’s analysis addressed only the requirement that the badge include the circulator’s name, and found it unconstitutional because it “force[d] circulators to reveal their identities at the same time they deliver their political message” and “expose[d] the circulator to the risk of heat of the moment harassment.” *Id.* at 198–199 (internal citations and quotations omitted). “The affidavit, in contrast, does not expose the circulator to the risk of ‘heat of the moment’ harassment.” *Id.* (citation omitted).

The Court reasoned that the moment the circulator interacts with the voter is a critical juncture and “[t]he injury to speech is heightened . . . because the badge

requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest." *ACLF*, 525 US at 199. The Court contrasted that result with the affidavit requirement, "which must be met only after circulators have completed their conversations with electors[.]" *Id.* (citation omitted). Accordingly, the Supreme Court held that the badge requirement "discourages participation in the petition circulation process" and violated the First Amendment. *Id.* at 200.

The *ACLF* Court contrasted disclosure requirements imposed on initiative proponents, and concluded that to the extent the statutes required the *payors* (the ballot initiative proponents) to disclose their expense information, the statutes were constitutional. In particular, the Court addressed whether statutes requiring ballot initiative proponents to file monthly reports and a final report disclosing specific information as to circulators—their names, addresses, and the amount the circulators were paid—were unconstitutional. 525 US at 201. Recognizing that disclosure provisions can further important governmental interests relating to transparency and deterring corruption in the elections process, see *Buckley*, 424 US at 66–68, the Court concluded that "[d]isclosure of the names of initiative sponsors, and of the amounts they have spent gathering support for their initiatives, responds to that substantial state interest." *Id.* at 202–203. But with respect to disclosing the circulators' information, the "added benefit of revealing the names of paid circulators and amounts paid to each circulator . . . is hardly apparent and has not been demonstrated." *Id.* at 203.

The Court also observed that ballot initiatives do not present the same risk of corruption as when money is spent on behalf of candidates. *Id.*, citing *Meyer*, 486 US at 427–428. And with respect to the use of paid circulators, the Court stated that “absent evidence to the contrary, ‘we are not prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot.’” *Id.*, at 203–204, quoting *Meyer*, 486 US at 426.

Consequently, while recognizing the state’s interest in disclosure of petition proponent information, the Supreme Court concluded that “[l]isting paid circulators and their income from circulation ‘forc[es] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts,’” and that the requirement was only “tenuously related to the substantial interests disclosure serves.” *Id.* at 204 (internal citations omitted). Thus, “Colorado’s reporting requirements, to the extent that they target paid circulators, ‘fai[l] exacting scrutiny.’” *Id.* at 204. The Court noted that Colorado could protect the integrity of the ballot initiative process through less problematic measures and did so through various other statutes. *Id.* at 204–205.¹⁸ See also *Washington Initiatives Now v Rippie*, 213 F3d 1132, 1139 (CA

¹⁸ The Supreme Court noted with approval Colorado’s provision making it unlawful to forge signatures and a provision voiding petitions if a circulator violates any provision of the laws governing circulation. *ACLF*, 525 US at 204–205.

9, 2000) (striking down a state law that required only paid circulators to disclose their identities).

Like the disclosure requirement found unconstitutional in *ACLF*, the check-box requirement at issue here focuses, not on information relevant to the proponent of a petition, but rather on the circulator collecting signatures. It similarly exposes the circulator to the risk of “heat of the moment” harassment, without any apparent state interest in the circulator’s personal details. Thus, under *ACLF*’s rationale, the check-box requirement fails to meet the exacting scrutiny necessary for its constitutional validity.

The Sixth Circuit Court of Appeals’ recent decision in *Libertarian Party of Ohio v Husted* further supports this conclusion. In *Husted*, the court rejected a facial First Amendment challenge to an Ohio statute that required circulators of nominating petitions to disclose on petition sheets “ ‘the name and address of the person employing the circulator to circulate the petition, if any.’ ” 751 F3d 403, 406 (CA 6, 2014). The court upheld the statute where the record demonstrated a small burden on First Amendment activity coupled with an important and well-established governmental interest to which the disclosure requirement was substantially related.

In particular, after reviewing the record, the Sixth Circuit determined that the state’s established interests outweighed what little evidence there was of burden: “the relevant evidence of chill—whether to paid circulators generally or to

those who circulate on behalf of minor party candidates—can best be described as scant. There is no record of any harassment or other efforts to dissuade circulators from circulating petitions.” *Id.* at 416. The Court further observed that

when we assess the chill apt to flow from Ohio’s employer disclosure requirement, we note that the disclosure is not made by the circulator to the voter. Rather, the disclosure is made by the circulator when the petition is filed, after the signatures are gathered. So while the core First Amendment activity of communicating with voters is occurring, the disclosure requirement plays no part.

Id. at 417. The court emphasized that the circulator would not be inhibited in the circulator’s interactions with a voter (elector) based on the disclosure requirement:

“So while the core First Amendment activity of communicating with voters is occurring, the disclosure requirement *plays no part.*” *Id.* at 417 (emphasis added).

As a result, the “circulator does not directly lose anonymity with the voter whose signature is being solicited.” *Id.*

Turning to the government’s interest, the Sixth Circuit observed that the disclosure requirement had been adopted in the wake of proven fraud in the circulation of nominating petitions for a candidate for president by paid circulators. *Id.* at 417. The court noted testimony from the government that “the employer information requirement helps deter fraud and also to detect it,” because “[i]t encourages employers of circulators to educate the circulators about applicable law and to hire individuals who will not reflect negatively on them. The information also helps if followup is necessary, because employers are often easier to contact than circulators.” *Id.* Also, the “information enables the [Ohio] Secretary of State’s Office to cross-check with campaign expenditure reports and thus contributes to

overall reporting compliance.” *Id.* The Court noted additional testimony regarding fraud by paid circulators who had used names and addresses from phone books, and the absence of fraud by volunteer circulators. *Id.* at 418. “Taking all this testimony together, it appears that the employer disclosure requirement serves substantial and legitimate state interests. The governmental interest is far more than theoretical since Ohio has experienced fraud by paid circulators.” *Id.*

Balancing the minimal burden imposed on circulators against the substantial governmental interest that was buttressed by proven instances of fraud, the court determined that the disclosure requirements met constitutional requirements. In doing so, the court further noted that the *ACLF* decision involved ballot initiative petitions and, there, the Supreme Court had not been presented with evidence of actual fraud. *Id.* at 419–420.

As can be seen, the Sixth Circuit’s decision in *Husted* reinforces the conclusion that the check-box requirement does not withstand constitutional scrutiny. As noted, the Michigan check-box requirement exposes the circulator to possible exchanges with an elector, which may have a chilling effect on the circulator’s willingness to participate in this process and thus is unlike Ohio’s disclosure requirement in *Husted*. Rather than “play[ing] no part” in the gathering of signatures, *Husted*, 751 F3d at 417, Michigan’s requirement may in fact create a “heat of the moment” exchange. Moreover, the statute at issue here relates to initiative petitions, as was at issue in *ACLF*, not candidate petitions. Thus,

controlling precedent in this jurisdiction supports the conclusion that the check-box requirement does not survive exacting scrutiny.

It is true that a factually analogous case from another jurisdiction upheld the statute in question, but its analysis is not persuasive. In *Citizens in Charge v Gale*, a federal district court upheld a Nebraska statute that required ballot initiative petitions to include a statement on the face of the petition that the circulator is being paid or is a volunteer circulator, whichever was applicable, in large type and red ink. 810 F Supp 2d 916, 922 (D Neb, 2011). That court rejected the plaintiffs' argument that the required language was "pejorative" as to paid circulators and constituted compelled speech and instead appeared to be swayed by the Government's argument that the requirement helped deter circulation fraud and did not impose a significant burden on circulators. Indeed, the record showed that a majority of petition drives after enactment of the statute that had been successful in placing issues on the ballot had used paid petition circulators. *Id.* at 928. Accordingly, the Court held the statute was constitutional.

However, not only is *Gale* not binding in Michigan, but it is inconsistent with *AFLC*'s concerns about circulators experiencing "heat of the moment harassment" and with the Supreme Court's recognition that there is a more substantial governmental interest in disclosure of information about the petition proponent than disclosure of information about the circulator at the point when the circulator is interacting with the public. Further still, unlike the evidentiary backdrop in *Gale* which served to justify the disclosures, no such evidence exists here. Consequently,

Gale does not warrant a different conclusion as to Public Act 608's check-box requirement.

In sum, the check-box requirement added to MCL 168.482(7) by Public Act 608 imposes a significant burden on the free speech rights of petition circulators under the state and federal constitutions without advancing any stated or apparent state interest in contemporaneous disclosure of the circulator's paid or volunteer status. As such, it does not meet the standard of exacting scrutiny applied in *ACLF* and is therefore unconstitutional. And, because the check-box requirement itself is unconstitutional, the inextricably related provision of Section 482c (which makes it a misdemeanor for a petition circulator to knowingly make a false statement concerning his or her status as a paid or volunteer signature gatherer—a statement that would be made in the check box) is likewise unconstitutional.

B. Severability of check-box requirements

Having concluded that the addition of § 482a(7) and § 482c in Public Act 608 is unconstitutional, it is necessary to determine whether the offending provisions may be severed from the remainder of Public Act 608.

As noted previously, Public Act 608 does not specifically address severability, but the Legislature has generally provided for the severability of invalid statutes in MCL 8.5. See also *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 346 (2011); *People v McMurchy*, 249 Mich 147, 158 (1930). In this case, the addition of § 482a(7) and § 482c was insular and discrete

and thus may be struck from the Act, leaving the remaining portions operable and in effect.

It is my opinion, therefore, that subsection 7 of MCL 168.482, and MCL 168.482c, as amended by 2018 PA 608, requiring the disclosure of the paid or voluntary status of petition circulators on the face of a petition, violate the speech clause of the Michigan Constitution and the U.S. Constitution, but may be severed from the remainder of 2018 PA 608.

C. Circulator affidavit requirement

Public Act 608 also added MCL 168.482a(1) and (2), which require that a “paid signature gatherer” submit a separate affidavit before circulating a petition, and further require that signatures be rejected if the circulator does not do so:

(1) If an individual who circulates a petition under section 482 is a paid signature gatherer, then that individual must, before circulating any petition, file a signed affidavit with the secretary of state that indicates he or she is a paid signature gatherer.

(2) Any signature obtained on a petition under section 482 by an individual who has not filed the required affidavit under subsection (1) is invalid and must not be counted.

As above, these statutes are subject to “exacting scrutiny” under the First Amendment. *John Doe No. 1*, 561 US at 196. There must be a “substantial relation” between the affidavit requirements and a “sufficiently important” governmental interest. *Id.* “To withstand this scrutiny, ‘the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.’” *Id.* (citations omitted). In making this evaluation, other

provisions in the regulatory scheme that serve a similar purpose and how those provisions interact with the challenged law should be considered. See *ACLF*, 525 US at 204–205.

Like the check-box provision, the affidavit requirements “target paid circulators” similar to the provisions struck down in *ACLF*. Subsections 482a(1) and (2) effectively require paid circulators to register to circulate petitions—requirements that do not apply to volunteer circulators. Moreover, the failure to file the affidavit before circulating as a paid circulator will result in the rejection of those signatures that were improperly collected. Together, these requirements impose a significant burden on paid circulators that does not apply to volunteer circulators. And this burden appears only tenuously responsive to a sufficiently important governmental interest.

The purpose of the affidavit requirement appears to be to provide the State with pre-circulation notice of a paid circulator’s status. As discussed above, the Supreme Court, in *ACLF*, affirmed that states have a “substantial state interest” in knowing who is sponsoring an initiative or referendum and how much is being spent to support the proposal. *ACLF*, 525 US at 202–203. And the Court concluded that Colorado’s reporting statutes requiring the “[d]isclosure of the names of initiative sponsors, and of the amounts they have spent gathering support for the initiatives, respond[ed] to that substantial state interest.” *Id.* at 202–203.

But here the affidavit requirement does not substantially respond to that interest because it does not require the disclosure of any payor information. In fact, it requires nothing about the sponsor, only confirmation of a circulator's status as a paid circulator to the Secretary of State. Additionally, at the time of filing, a petition will also contain the circulator's residential address, city or township, state, and zip code, in the event it becomes necessary to contact the circulator.¹⁹ No reason is apparent why the Secretary of State would need, or be helped by, receiving this status information of a circulator. As a result, the affidavit requirement is not substantially related to Michigan's interest in transparency and the protection against corruption in the initiative and referendum process and, to the extent it targets paid circulators, the statute fails exacting scrutiny and is unconstitutional. See *ACLF*, 525 US at 204.

D. Severability of circulator affidavit requirement

Having concluded that subsections 482a(1) and (2) of Public Act 608 are unconstitutional, it is necessary to determine whether these provisions may be severed from the remainder of Public Act 608. Like the provisions discussed above, the addition of these subsections was insular and discrete. Thus, they may be struck from the Act, leaving the remaining portions operable and in effect. MCL 8.5; *In re Request for Advisory Opinion*, 490 Mich at 346; *McMurchy*, 249 Mich at 158.

¹⁹ MCL 168.544c, which applies to petitions circulated under § 482, requires a circulator to sign a petition and include a residential address, along with other information, before filing the petition with the Secretary of State. See MCL 168.482(6), 168.544c(1)–(3), (5), and (15).

It is my opinion, therefore, that subsections 1 and 2 of MCL 168.482a, as amended by 2018 PA 608, requiring paid circulators to file an affidavit before circulating petitions, violate the speech clause of the Michigan Constitution and the U.S. Constitution, but may be severed from the remainder of 2018 PA 608.

E. Certificate of circulator requirements

Consideration of your question about the penalties for false statements added by Public Act 608 requires a discussion of requirements for circulator certifications found elsewhere in the act.

Petitions circulated under MCL 168.482 (i.e., those for constitutional amendment, initiation of legislation, or referendum of legislation) must contain a “certificate of circulator” as provided for in MCL 168.544c(1), which generally applies to different types of petitions. See MCL 168.482(6). Under § 544c(1) the petition form must state under the heading “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 listed in the heading of the petition, and the elector was qualified to sign the petition.

The circulator is then directed to not sign or date the certificate until after circulating the petition. *Id.* The petition must thereafter include the following language:

____ If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark on the line 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 on the line 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.

(Printed Name and Signature of Circulator) (Date)

(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. [MCL 168.544c(1).]

In addition to setting forth these form requirements, § 544c also imposes certain related penalties. For example, MCL 168.544c(5) provides that a “circulator shall not obtain electors’ signatures after the circulator has signed and dated the certificate of circulator.” If a circulator does so, the “filing official shall not count electors’ signatures that were obtained after the date the circulator signed the certificate or that are contained in a petition that the circulator did not sign and date.” *Id.* MCL 168.544c(8) provides that an “individual shall not . . . make a false statement in a certificate of a petition,” or “[s]ign a name as circulator other than his or her own.” An individual who does so, which includes a circulator, is guilty of a misdemeanor. MCL 168.544c(9). Section 544c imposes various other possible penalties and fines related to violations of subsection 544c(8), including the disqualification of “obviously fraudulent signatures on a petition form[.]” See MCL 168.544c(9)–(12). These provisions “apply to all petitions circulated under authority of the election law” “except as otherwise expressly provided[.]” MCL 168.544c(15).

1. Subsection 482a(3)

Subsection 482a(3), as added by 2018 PA 608, invalidates *all* signatures on a particular petition sheet if the circulator “provides or uses a *false address* or provides any *fraudulent information* on the certificate of circulator.” (Emphasis added.) Under this subsection, in addition to a misdemeanor penalty for providing false information in the certificate of circulator pursuant to subsection 544c(8), all the signatures on the relevant petition sheet will be discounted. A determination regarding whether a circulator used a “false address” or provided “fraudulent

information” on a petition sheet would be made by the Board of State Canvassers during the canvass of the petition under MCL 168.476(1)–(2).²⁰ Given the content and timing of this new penalty, it may have been added in response to a recent decision by the Michigan Court of Appeals, which held that “Michigan’s election laws make no allowance for striking elector signatures in the event that a circulator records an incorrect address” in the circulator’s certificate. *Protecting Michigan Taxpayers v Bd of State Canvassers*, 324 Mich App 240, 250 (2018).

You question the constitutionality of subsection 482a(3)’s discounting of elector signatures based on a circulator’s provision of false or fraudulent information on the petition sheet.

This is not the first time that the Legislature has invalidated signatures based on circulator error. MCL 168.544c(5) requires the exclusion of elector signatures or entire petition sheets based on the date of the signature or if the sheet was not signed and dated by the circulator: “A filing official shall not count electors’ signatures that were obtained after the date the circulator signed the certificate or that are contained in a petition that the circulator did not sign and date.” MCL 168.544c(2) requires the rejection of a signature if the elector “does not include his or her signature, his or her street address or rural route, or the date of signing on the petition[.]” See also *Protecting Michigan Taxpayers*, 324 Mich App at 248–250

²⁰ Subsection 476(2) provides that the “board of state canvassers may hold hearings upon any complaints filed or for any purpose considered necessary by the board to conduct investigations of the petitions. To conduct a hearing, the board may issue subpoenas and administer oaths.” MCL 168.476(2).

(discussing application of MCL 168.544c). Thus, a circulator's error in failing to sign and date a petition before filing, or in collecting signatures after the date the circulator has signed and dated the petition, will result in the invalidation of otherwise valid elector signatures.

Now, a circulator's inclusion of a false address or other fraudulent information in the certificate will result in the discounting of elector signatures under § 482a(3).

When deciding whether a ballot access restriction is constitutional one must weigh the “character and magnitude” of the burden the state's rule imposes on those rights against the interests the state contends justify that burden, and consider the extent to which the state's concerns make the burden necessary. *Burdick v Takushi*, 504 US 428, 434 (1992), quoting *Anderson v Celebrezze*, 460 US at 788–789. Regulations imposing severe burdens on rights must be narrowly tailored and advance a compelling state interest. But lesser burdens will trigger less taxing review, and a state's “‘important regulatory interests’” will usually be enough to justify “‘reasonable, nondiscriminatory restrictions.’” *Burdick*, 504 US at 434, quoting *Anderson*, 460 US at 788.

Subsection 482a(3)'s requirement that elector signatures be rejected based on a circulator's inclusion of false information on a petition imposes a more than minimal but less than severe burden on petition circulators and on electors who sign the petition. As discussed above, the State already rejects elector signatures

based on circulator errors, and that provision has been upheld. See, e.g., *Taxpayers United for Assessment Cuts v Austin*, 994 F2d 291, 298–299 (CA 6, 1993) (affirming as constitutional Michigan statute requiring rejection of petition signatures where circulator dated petition sheet incorrectly). “States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process[.]” *ACLF*, 525 US at 191. Michigan has a substantial interest in protecting against fraudulent practices or corruption in the initiative and referendum process. *John Doe No. 1*, 561 US at 197–198. Discounting signatures on petition sheets on which a circulator has knowingly included a false address or other fraudulent information may encourage petition sponsors to more carefully select and educate the circulators they deploy. And it may protect against the inclusion of fraudulent signatures on a petition if the circulator is required to provide a correct address at which he or she may be found if there is any question as to the validity of petition signatures. Thus, on a facial review of this statute, the substantial interest of the State in promoting the integrity of the process, on balance, outweighs the burden imposed on petition circulators and signers. But again, because this is a new statute that has yet to be applied, it is possible that the future application of the statute to a particular circulator or elector may warrant subsequent review by the courts.

It is my opinion, therefore, that subsection 3 of MCL 168.482a, as amended by 2018 PA 608, requiring the invalidation of signatures on petition sheets

containing false or fraudulent information supplied by the circulator, does not violate the speech clause of the Michigan Constitution or the U.S. Constitution.

2. MCL 168.482a(4)

Subsection 4 of § 482a provides that “[i]f a petition under section 482 is circulated and the petition does not meet all of the requirements under section 482, any signature obtained on that petition is invalid and must not be counted.” 2018 PA 608 § 482a(4).²¹

Subsection 482a(4) acts as a general, catch-all penalty provision for a form or content violation of § 482 not covered by another more specific statute. See, e.g., MCL 168.544c. For example, if a petition circulated under § 482 failed to include the new summary of the proposal required by § 482(3) or the warning to electors required under § 482(5), § 482a(4) would require signatures on that petition sheet to be discounted. In *Stand Up for Democracy v Secretary of State*, the Michigan Supreme Court held that mandatory petition form and content requirements must be complied with, and that nonconforming petitions are not entitled to placement on the ballot. 492 Mich 588, 601–619 (2012). “Entitlement to be placed on the ballot requires a showing of actual compliance with the law.” *Id.* at 619. Subsection 482a(4) essentially implements that holding by confirming that form and content errors will result in the invalidation of signatures. This result is mitigated to some

²¹ Public Act 608 amended § 482 to require a corresponding warning statement appear on the petition “that if the petition circulator does not comply with all of the requirements of this act for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted.” 2018 PA 608, § 482(8).

extent by the fact that petition sponsors may seek approval as to the form of their petition *before* circulating.²²

Because the right to initiate or refer legislation, or to amend the Michigan Constitution, “is a wholly state-created right, . . . the state may constitutionally place nondiscriminatory, content-neutral limitations on the . . . ability to initiate” these processes. *Taxpayers United for Assessment Cuts*, 994 F2d at 297. Assuming that the form or content requirement is itself valid, subsection 482a(4) is a nondiscriminatory, content-neutral limitation, and is not unconstitutional. *Id.* at 297–299 (affirming as constitutional various Michigan statutes regarding the form and content of petitions and the rejection of signatures for failing to conform to statutes).

It is my opinion, therefore, that subsection 4 of MCL 168.482a, as amended by 2018 PA 608, requiring the invalidation of signatures on a petition sheet that does not comply with a mandatory form or content requirement, does not violate the speech clause of the Michigan Constitution or the U.S. Constitution.

3. MCL 168.482(5)

Subsection 5 of § 482a invalidates a signature on a petition sheet if it was “not signed in the circulator’s presence[.]” 2018 PA 608, § 482a(5). Similarly, as

²² The statutes provide for the Board of State Canvassers’ review of the petitions *after* the petitions have been circulated and signatures obtained. See MCL 168.475; 168.476; 168.477. But for many years, the Board has provided the service of allowing persons or organizations circulating petitions to come before the Board and obtain pre-approval as to the form of their petitions prior to being circulated.

discussed above, the “certificate of circulator” prescribed by § 544c(1) both informs generally and requires the circulator to certify specifically “that each signature on the petition was signed in his or her presence.” MCL 168.544c(1). Subsection 482a(5) now requires the discounting of signatures affixed to a petition outside the presence of the circulator. The importance of requiring an elector to sign in the presence of the circulator warrants little discussion. If a petition is signed outside the presence of the circulator, the circulator has no ability to affirm that the signature is in fact that of the person who purportedly signed the petition. The rejection of signatures proven to have been obtained outside the presence of the circulator is supported by the State’s substantial interest in protecting against fraudulent practices or corruption in the initiative and referendum process. *John Doe No. 1*, 561 US at 197–198. See, e.g., *Taxpayers United for Assessment Cuts*, 994 F2d at 298–299 (affirming as constitutional Michigan statute requiring rejection of petition signatures where the circulator incorrectly dated the petition sheet). Subsection 482a(5) is a nondiscriminatory, content-neutral limitation and is not unconstitutional.

It is my opinion, therefore, that subsection 5 of MCL 168.482a, as amended by 2018 PA 608, requiring the invalidation of signatures on a petition that were not signed in the presence of the circulator of the petition sheet, does not violate the speech clause of the Michigan Constitution or the U.S. Constitution.

Question 4

Your fourth question relates to § 482, which was amended by Public Act 608 to require that petition sponsors include “[a] summary in not more than 100 words of the purpose of the proposed amendment or question proposed” on the face of a petition. MCL 168.482(3).

Public Act 608 also added § 482b, which permits, but does not require, a petition sponsor to submit the summary of the purpose of a proposed amendment or question to the Board of State Canvassers for approval:

A person who circulates a petition under section 482 *may*, before circulating any petition, submit the summary of the purpose of the proposed amendment or question proposed that is required under section 482(3) to the board of state canvassers for approval as to the content of the summary. The board of state canvassers must issue an approval or rejection of the content of the summary not more than 30 days after the summary is submitted. The board of state canvassers may not consider a challenge to the sufficiency of a submitted petition on the basis of the summary being misleading or deceptive if that summary was approved before circulation of the petition. [MCL 168.482b(1) (emphasis added).]

The apparent aim of this provision was to provide a “safe harbor” that would preclude the Board of State Canvassers from subsequently finding fault with the petition based on the content of the summary. If a petition sponsor elects to submit the summary for review, subsection 482b(2) requires that the Director of Elections prepare the summary for review and approval by the Board of State Canvassers. 2018 PA 608, § 482b(2).

A. Approval of summary process

You note that “sponsors of referendum petitions are at a unique disadvantage compared with the sponsors of other types of petitions because the process by which the petition summary is approved can last up to 30 days.” You further observe that “[a]lthough the approval process is voluntary, referendum petition sponsors who forego it due to time constraints will be deprived of the statute’s safe harbor against future challenges.” You ask whether this result is constitutional.

Based on your question, you do not challenge the Legislature’s authority to require that a petition include a summary of the proposal under subsection § 482(3). Nor do you generally challenge the enactment of the voluntary review and approval process for the summary described in subsection § 482b(1). Rather, you question the application of the voluntary review process to sponsors of referendum petitions in certain situations.

Under Const 1963, art 2, § 9, “[t]he power of referendum . . . must be invoked . . . within 90 days following the final adjournment of the legislative session at which the law was enacted.”²³ This provision has been interpreted to fix the end date by which a referendum petition must be filed, but not the start date for circulating petitions. *Michigan Farm Bureau v Sec’y of State*, 379 Mich at 393–396.

²³ Const 1963, art 4, § 13 provides that “[e]ach regular session [of the Legislature] shall adjourn without day, on a day determined by concurrent resolution, at twelve o’clock noon[.]” The Legislature now generally adjourns in late December. See, e.g., *Bishop v Montante*, 395 Mich 672, 677 (1976) (noting Legislature’s “consistent late December sine die adjournments”).

Referendum petitions may be circulated before the end of the legislative session. The relevant date is the date of enactment of the targeted act. *Id.* But the petitions must be filed no later than the ninetieth day after adjournment of the session. Thus, this provision could result in a shorter circulation window when compared to petitions to initiate legislation or to amend the Constitution.²⁴ But that result is provided for by the text of the Constitution.

What is clear from the text of § 9, however, is that referendum sponsors are generally entitled to a minimum of 90 days within which to circulate and file petitions—from the date of adjournment to the ninetieth day after adjournment. Statutes that encroach on this minimum circulation period require scrutiny to determine whether they impose an impermissible “additional obligation[]” or “undue burdens” on the right to propose referenda. *Wolverine Golf Club*, 384 Mich at 466.

Here, the worst-case scenario would arise when a bill is enacted on the very last day of the legislative session. In that case, a referendum sponsor would have only the minimum 90 days within which to complete the circulation and filing of a petition. And if a sponsor elects to have a petition summary approved by the Board of State Canvassers it could take the Board thirty days to approve the summary under subsection 482b(1). In that case, if the referendum sponsor submits the

²⁴ There is no prescribed time period for circulating ballot proposal petitions. Instead, petition sponsors are guided by the application of MCL 168.472a, which provides that signatures more than 180-days old “shall not be counted.”

summary for approval by the Board on day one of the 90-day period, and it takes the Board until the thirtieth day to approve the summary, the sponsor may have only 60 days left within which to circulate the petition and collect the required 212,530 signatures. Certainly, if approval of the summary was required by § 482b(1) under these circumstances, it could well result in an unconstitutional burden. *Wolverine Golf Club*, 384 Mich at 466.

Subsection 482b(1) does not require petition sponsors to seek approval of the summary. That process is voluntary. By choosing to forego the approval process, a referendum petition sponsor will not benefit from MCL 168.482b(1)'s express instruction that the Board of State Canvassers "may not consider a challenge to the sufficiency of a submitted petition on the basis of the summary being misleading or deceptive if that summary was approved before circulation of the petition." Nevertheless, it is a choice, not a requirement.

It is my opinion, therefore, that subsection 1 of MCL 168.482b, as amended by 2018 PA 608, providing an approval process for the summary of a ballot proposal, does not violate article 2, § 9 of the Michigan Constitution.

B. Use of summary as ballot language

You also ask whether the Board of Canvassers may later approve ballot language that differs from a summary of the statement of purpose previously approved by the Board of Canvassers under § 482b(1).

MCL 168.482b(2), as added by Public Act 608, imposes requirements on petition summary language and provides that it be prepared by the Director of Elections subject to approval by the Board of State Canvassers:

If a person submits the summary of the purpose of the proposed amendment or question proposed [to the Board of Canvassers] as provided in subsection (1), all of the following apply:

(a) The summary of the purpose of the proposed amendment or question proposed must be prepared by the director of elections, with the approval of the board of state canvassers.

(b) The summary is limited to not more than 100 words and must consist of a true and impartial statement of the purpose of the proposed amendment or question proposed in language that does not create prejudice for or against the proposed amendment or question proposed.

(c) The summary must be worded so as to apprise the petition signers of the subject matter of the proposed amendment or question proposed, but does not need to be legally precise.

(d) The summary must be clearly written using words that have a common everyday meaning to the general public.

As you note in your request, the drafting requirements for the summary of the purpose mirror the requirements for the ballot language that the Director of Elections drafts and the Board of State Canvassers approves after a petition to initiate or refer legislation or to amend the Constitution has been declared sufficient for placement on the ballot. See MCL 168.22e, 168.32, 168.477, 168.485, and 168.643a.

“Nothing will be read into a statute that is not within the manifest intention of the Legislature as gathered from the act itself.” *In re Schnell*, 214 Mich App 304, 309 (1995). Moreover, “there is a presumption against implied repeals.” *Int’l*

Business Machines Corp v Dep't of Treasury, 496 Mich 642, 660 (2014), citing *Jackson v Michigan Corrections Comm*, 313 Mich 352, 356 (1946). In enacting Public Act 608, the Legislature left untouched the statutes providing for the drafting, review, and approval of the ballot language by the Director of Elections and the Board. And the Legislature did not expressly provide that, if a summary is approved, it must also be used as the ballot language.

Because the drafting standards are the same for both the summary and ballot language, the summary *could* later be approved by the Board of State Canvassers as ballot language—but the Board is not *required* to use the previously approved summary. Rather, the Director of Elections and the Board remain authorized to draft and approve ballot language that differs from the petition summary. See MCL 168.22e, 168.32, 168.477, 168.485, and 168.643a. Notably, if the Director and the Board intend to use the previously approved summary as ballot language, the language must still be approved in conformity with MCL 168.22e, which requires the approval of ballot language for initiative and referendum petitions take place at a public meeting of the Board noticed three days in advance of the meeting date. Various individuals have a right to notice of, and to speak at, the public meeting regarding proposed ballot language. MCL 168.22e(1)–(2).

It is my opinion, therefore, that the Director of Elections and the Board of State Canvassers are authorized to draft and approve a statement of purpose for a

statewide ballot proposal that differs from the summary of the proposal previously approved by the Board under MCL 168.482b(1), as amended by 2018 PA 608.

Question 5

Finally, you ask whether MCL 168.479, as amended by Public Act 608, violates any part of article 6 of the Michigan Constitution relating to the judiciary, or Michigan's separation of powers clause, as set forth in article 3, § 2 of the Constitution.

A. Filing in the Michigan Supreme Court

Public Act 608 added subsection 2 to MCL 168.479, which provides that a person aggrieved by a decision of the Board of State Canvassers concerning the sufficiency of a petition must file a claim in the Michigan Supreme Court within seven days:

(1) Notwithstanding any other law to the contrary and subject to subsection (2), any person who feels aggrieved by any determination made by the board of state canvassers may have the determination reviewed by mandamus or other appropriate remedy in the supreme court.

(2) If a person feels aggrieved by any determination made by the board of state canvassers regarding the sufficiency or insufficiency of an initiative petition, *the person must file a legal challenge to the board's determination in the supreme court within 7 business days after the date of the official declaration of the sufficiency or insufficiency of the initiative petition or not later than 60 days before the election at which the proposal is to be submitted, whichever occurs first.* [Emphasis added.]

Under subsection 2, aggrieved persons appear limited to filing legal challenges regarding the sufficiency of an initiative petition in the Supreme Court.

Previously, given the discretionary “may” in subsection 1, such claims were typically brought first in the Michigan Court of Appeals, and then appealed to the Michigan Supreme Court as necessary, consistent with MCL 600.4401(1)

Article 6, § 4 of the Constitution sets forth the Supreme Court’s jurisdiction: “[T]he supreme court shall have general superintending control over all courts; power to issue, hear and determine *prerogative and remedial writs*; and appellate jurisdiction as provided by rules of the supreme court.” (Emphasis added.) “Mandamus is properly categorized as both an ‘extraordinary’ and a ‘prerogative’ writ.” *O’Connell v Director of Elections*, 316 Mich App 91, 100 (2016). Thus, the Supreme Court has jurisdiction to hear and determine complaints for writs of mandamus, although that jurisdiction is not exclusive to the Supreme Court. *Id.* at 106 (discussing jurisdiction of courts over requests for mandamus). Notably, “[t]he legislative department cannot grant or withhold such jurisdiction.” *In re Mfr’s Freight Forwarding Co*, 294 Mich 57, 69 (1940).

As a general matter, the Supreme Court retains complete discretion to consider which cases it will hear. See MCR 7.303(B); MCR 7.306. Supreme Court review is mandatory only in cases involving “a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension.” MCR 7.303(A). In enacting § 479(2), the Legislature neither granted the Supreme Court jurisdiction nor withheld jurisdiction. *In re Mfr’s Freight Forwarding Co*, 294 Mich at 69. Subsection 479(2) simply requires that an aggrieved person file a legal challenge to the sufficiency of an initiative petition in the Supreme Court. Nothing in § 479(2)

requires the Supreme Court to exercise its jurisdiction; instead, it merely directs persons where to file legal challenges.

Even though the Legislature may direct litigants to make their initial filings in the Supreme Court, there is, of course, no guarantee that the Supreme Court will actually take jurisdiction of that legal challenge. The Court retains its authority to direct or remand a complaint for writ of mandamus to the Michigan Court of Appeals for an initial decision, and the Court may well direct a legal challenge filed under section § 479(2) to be refiled in the Court of Appeals. MCR 7.300(B). Accordingly, the first sentence of § 479(2) does not violate article 6, § 4.

It is my opinion, therefore, that the provision in MCL 168.479(2), as amended by 2018 PA 608, requiring an aggrieved person to file a legal challenge regarding a determination as to the sufficiency of an initiative petition in the Michigan Supreme Court is not unconstitutional under article 6, § 4 of the Michigan Constitution.

B. According “highest priority” to sufficiency challenges

Subsection 479(2) was further amended to provide that the Michigan Supreme Court must accord challenges to the sufficiency of a petition “highest priority”:

Any legal challenge to the official declaration of the sufficiency or insufficiency of an initiative petition has the *highest priority* and *shall be advanced on the supreme court docket* so as to provide for the earliest possible disposition. [2018 P 608, § 479(2) (emphasis added).]

Determining whether this statute is constitutional requires consideration of the separation of powers clause and the constitutional powers of the Supreme

Court. The Michigan Constitution provides for the separation of powers of the three branches of government. Specifically, article 3, § 2 states:

The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

The Constitution grants the Supreme Court exclusive authority to “establish, modify, amend and simplify the practice and procedure in all courts of this state.” Const 1963, art 6, § 5; *McDougall v Schanz*, 461 Mich 15, 26 (1999) (“It is beyond question that the authority to determine rules of practice and procedure rests exclusively with this Court.”) Indeed, the Supreme Court has held that “[t]he function of enacting and amending judicial rules of practice and procedure has been committed exclusively to this Court . . . ; a function with which the legislature may not meddle or interfere save as the Court may acquiesce and adopt for retention at judicial will.” *Perin v Peuler (On Rehearing)*, 373 Mich 531, 541 (1964). For this reason, to the extent that § 479(2) seeks to control the Supreme Court’s established practices and procedures, it is unconstitutional.

In dictating that a legal challenge to the sufficiency of an initiative petition has the highest priority and must be advanced on the Supreme Court docket, the Legislature has interfered with the Supreme Court’s authority to determine rules of practice and procedure. In fact, the Supreme Court has already provided for a general procedure by which proceedings in the Supreme Court may be expedited. MCR 7.311(E) provides:

A party may move . . . to expedite any proceeding before the Court. The motion or an accompanying affidavit must identify the manner of service of the motion on the other parties and explain why . . . expedited scheduling of the proceeding is necessary. If the motion is granted, the Court will schedule an earlier hearing or render an earlier decision on the matter.

There is no Michigan Court Rule providing expedited Supreme Court consideration of petition disputes.²⁵ That is not to say that the Supreme Court has not considered the matter. With respect to such disputes in the Court of Appeals, MCR 7.213(C)(4) provides:

The priority of cases on the [Court of Appeals'] session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:

* * *

(4) appeals from all cases involving election issues, including, but not limited to, recall elections and petition disputes.

In sum, under our Constitution, it is the Supreme Court's role to establish the rules of practice and procedure in the courts of this state. And the Court has done so with respect to whether and in which court, i.e., the Court of Appeals, petition disputes should be mandatorily expedited.

Under these circumstances, MCL 168.479(2)'s second requirement, which purports to establish a procedural rule that is within the exclusive control of the Supreme Court, is unconstitutional.

²⁵ There are also no administrative orders requiring the expedited consideration of election cases.

C. Severability of the amendment

Having concluded that § 479(2)'s "priority" requirement is unconstitutional, it is necessary to determine whether this provision may be severed from the "place of initial filing" requirement and from the rest of Public Act 608. The primary issue is whether the portion of § 479(2) remaining after its last sentence has been severed is capable of functioning alone. See, e.g., *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 345 (2011) (noting that it has long been established that "[i]t is the law of this State that if invalid or unconstitutional language can be deleted from an ordinance and still leave it complete and operative then such remainder of the ordinance be permitted to stand").

As discussed above, § 479(2) consists of two sentences. The first dictates where and when *an aggrieved person* must file a legal challenge regarding the sufficiency of an initiative petition. The second, which is unconstitutional, dictates that the *Supreme Court* must treat that legal challenge as the highest priority and advance it on the Supreme Court's docket. Given the different subjects of the two sentences, the first sentence is capable of functioning without the second sentence. In fact, in the second sentence's absence, the Michigan Court Rules will govern. Therefore, while the "priority" requirement is unconstitutional, the "place of initial filing" requirement may remain in full force and effect.

It is my opinion, therefore, that subsection 2 of MCL 168.479, as amended by 2018 PA 608, requiring the Michigan Supreme Court to accord highest priority to cases challenging the sufficiency of petitions, violates the separation of powers clause of the Michigan Constitution, but may be severed from the remainder of 2018 PA 608.

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