STATE OF MICHIGAN

IN THE COURT OF CLAIMS

MICHIGAN COMPREHENSIVE CANNABIS LAW REFORM COMMITTEE a/k/a MILEGALIZE, Plaintiff, v RUTH JOHNSON MICHIGAN SECRETARY OF STATE, CHRISTOPHER THOMAS DIRECTOR OF BUREAU OF ELECTIONS, and BOARD OF STATE CANVASSERS, Defendants.	Case No. 16- -MM Honorable **COMPLAINT, MANDAMUS, AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**
HANK LAW, PLLC By: Jeffrey A. Hank (P71152) *Attorney Plaintiff* P.O. Box 1358 East Lansing, MI 48826 Telephone 855-426-5529	Thomas Lavigne (P58395) Matthew R. Abel (P38876) Cannabis Counsel, PLC *Attorneys for Plaintiff* 2930 E. Jefferson Detroit, MI 48207

NOTICE: THIS COMPLAINT INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.

NOTICE: There is a related case in this court concerning some of the same or similar constitutional claims, Committee to Ban Fracking in Michigan v Johnson et al, 16- - , Honorable Stephen L. Borrello.

ORAL ARGUMENT REQUESTED

COMPLAINT TO SHOW CAUSE, MANDAMUS, REQUEST FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

NOW COMES PLAINTIFF, MILEGALIZE, by and through its attorney Jeffrey A. Hank, and complains and moves for a writ of mandamus and an order to show cause against defendants, as well as for declaratory, injunctive and other relief. This action seeks a minimum of at least four immediate rulings and one outcome-- to place the MILegalize proposal on the ballot of the next general election due to:

a. The "rebuttable presumption" burden for any signature on an initiatory petition older than 180 days under MCL 168.472a is unconstitutional;
b. The 1986 Board of Canvassers policy to utilize the rebuttable presumption, which all parties acknowledge has never been utilized and is impossible for Plaintiff to comply with, is unconstitutional;
c. SB776, which limits statutory initiative and constitutional amendments petitions to a strict 180 day limit, is unconstitutional and cannot be retroactively applied to Plaintiff; and
d. SB776, purported to be enacted with immediate effect, in fact never had the votes for immediate effect in the Michigan House (43 House members of 109 possible voted against immediate effect, not a two-thirds vote) and any Legislative action declaring immediate effect is clear fraud and in violation of Art IV, Sec 27 of the 1963 Constitution.

PARTIES, JURISDICTION & VENUE

1. The Michigan Comprehensive Cannabis Law Reform Committee a/k/a MILegalize is a ballot question committee organized under Michigan law, and headquartered in Lansing, Michigan. The MILegalize initiative would enact the Michigan Marijuana Legalization, Regulation, and Economic Stimulus Act, which has three basic pillars of policy and would broadly legalize cannabis for adults over the age of 21; create new legislation to supplement and improve on the Michigan Medical Marihuana Act to provide safe access to and regulation for medical marihuana; and allow for the farming of industrial hemp. Additional provisions provide state and local authority to regulate cannabis commerce and use a 40/40/20 tax proceeds division 40% to the School Aid Fund, 40% to the Department of Transportation, and 20 % back to local governments that license and regulate cannabis related businesses in their own communities. The initiative is estimated to save various levels of government hundreds of millions of dollars in costs annually and raise hundreds of millions in dollars in new tax revenue; create 25,000 to 50,000 cannabis industry related new jobs; and eliminate the arrests of approximately 20,000 adults for simple cannabis use and possession every year in Michigan. Plaintiff's

full petition language is attached as **Exhibit A**, and the language is on the back of the petition.

2. Defendants are state officials and agencies who implement and administer the initiative statutes and regulations. The governor appoints the State Board of Canvassers (BOC). The Secretary of State (SOS) appoints and supervises the director of the Bureau of Elections (BOE), a state agency of the State of Michigan. The BOC consists of 4 members, appointed to the board by the Governor, assisted by the BOE, and by law containing two members of each the Republican and Democratic political parties.

3. Jurisdiction and venue are proper in this court as the conduct complained with occurred in the State of Michigan and contains constitutional and legal claims, equitable claims including declaratory and injunctive relief, extraordinary relief, financial claims for money damages, and other claims herein or to be later added upon amendment of Plaintiff's complaint, against the state and state agencies under MCL 600.6419(1)(a).

4. This action challenges the constitutionality of the rebuttable presumption itself, the 1986 BOC Policy (**Exhibit E**), and any time-limitation in Michigan statute MCL 168.472a for collecting signatures, as applied to petitions to initiate legislation. The rebuttable presumption, which is the statute if any applied to Plaintiff, was enacted in 1973:

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

5. The 1986 BOC rebuttable presumption policy purports to require the proponent of an initiative to rebut the presumption posed by MCL 168.472a by either:

a. Proving that the person who executed the signature was properly registered to vote at the time the signature was executed and;

b. Proving with an affidavit or certificate of the signer that the signer was registered to vote in Michigan within the '180 day window period' and further, that the presumption posed under MCL 168.472a could not be rebutted through the use of a random sampling process.

6. At stake in this case are not only the interests of the MILegalize ballot campaign, but also the longstanding constitutional rights of approximately 7 million Michigan qualified electors to enact legislation through the citizen initiative process.

7. On June 1, 2016, Plaintiff filed approximately 354,000 signatures on petitions to initiate legislation pursuant to Art 2, Sec 9 to qualify for the statewide ballot. Any campaign seeking to place an initiative on the ballot had to submit at least 252,523 signatures to qualify. Plaintiff submitted petitions with potentially more than 100,000 extra signatures than the minimum requisite threshold. **Exhibit B**.

8. On June 6, 2016, the BOE issued a staff recommendation to deny Plaintiff's petitions to the BOC allegedly because Plaintiff failed to submit enough signatures for ballot qualification due to more than 200,000 of Plaintiff's signatures being collected more than 180 days prior to submission, and the basis for not accepting those signatures was the 1986 BOC policy, and on June 9, 2016, the BOC accepted the BOE staff recommendation at a BOC meeting. **Exhibit C**.

9. Plaintiff at this time can offer proofs of rebuttal for at least 138,000-plus signatures, and was able to rebut 137,000-plus signatures at the time of filing. **Exhibit D**.

10. An actual controversy and actual imminent harm exists because the BOE and BOC have taken adverse action against Plaintiff and Plaintiff must act to preserve its rights.

11. Plaintiff exhausted all administrative remedies before filing suit, and Plaintiff has no other adequate remedy under law but to file suit for mandamus.

12. If an order of mandamus is granted on an order to show cause issued by this court, there is still time for canvassing and the ballots to be printed with the ballot question included. Michigan courts can rule expeditiously on elections cases, including ordering reprint of ballots. *Detroiters for City Council by Districts v Janice Winfrey* (Michigan Court of Appeals, Sept. 22, 2009) ordered a Home Rule City act amendment be placed on the ballot—the mandamus action in that case was filed that year on September 16th, 2009. Similarly the BOE and BOC were seriously prejudiced in 1986 with the *Consumers Power* case, which was filed and the debate at the time was in August of 1986, only a couple months before the election. The ability to litigate these disputes in a much more timely and thoughtful manner exists if the Court acts expeditiously and orders the BOE to begin canvassing the entire set of petitions submitted for whether the signors were qualified electors.

13. Immediate action is necessary so that the voters are not deprived of their right to vote on plaintiff's ballot question at the November 8, 2016 regular election, or whatever regular election is next scheduled after these disputes reach final resolution. Additionally, ballots begin to be proofed and printed in September and this issue must be resolved expeditiously in case appeals or further litigation occur.

14. Plaintiff moves, under Michigan Court Rule 3.305(C), that an order to show cause be issued, and that this case be expedited so that the voters may have the opportunity they deserve to voice their opinion on the ballot question.

15. The undersigned certifies under Michigan Court Rule 3.305(E) that all of the attached exhibits are true and correct copies.

BACKGROUND ON THE MICHIGAN STATUTORY INITIATIVE PROCESS

16. Plaintiff restates each previous allegation as if restated herein.

17. The rights to initiate citizen legislation by petitioning were intended by the framers of the 1908 and 1963 Constitutions to be a citizen-utilized fundamental check and balance on government, a right granted by the People, to themselves as the People, an equal if not superior right granted in the same Constitutions to the Legislature itself.

18. Michigan's 1908 constitution established the initiative only for constitutional amendments. A vote of the people amended it in 1913 to include statutory initiatives. The gubernatorial periods at this time were 2 years, and campaigns were able to petition for at least the gubernatorial period.

19. Michigan voters have had at least the time period between gubernatorial elections (in 1908 it was every 2 years, for post-1963 Constitution it is up to at least 4 years) to collect signatures for an initiative.

20. There was little change until 1941 when another amendment gave defendants power to check the names appearing on petitions against the names of registered voters.

21. The same year by PA 246 the legislature enacted the election law. In 1954 it was repealed and re-enacted as our present law by PA 116, except the 1954 act now requires

defendants to prepare a 100-word statement to appear on the ballot stating the purpose of a measure which reaches that stage.

22. Michigan's 1963 Constitution, Art 2 Sec 9, grants the right of initiatives to the People.

23. In Michigan, citizens can amend their constitution under Art 2, Sec 12, or create a new state statute through the initiative process under Art 2, Sec 9. Between 1963, when the Michigan Constitution enabling citizen initiative went into effect, and 2014, 31 proposed amendments to the state's constitution appeared on the ballot through the initiative process. Michigan voters approved ten of those 31 proposed amendments. In that same time, 13 initiatives to change or create state statutes appeared on the Michigan ballot through citizen initiative. Seven of those initiatives passed. Additionally, some proposed citizen initiatives were passed into law by the Michigan legislature without going to the ballot, but after sufficient signatures were collected to place the matter before the legislature.[1]

24. At the 1963 constitutional convention, there was serious debate about the right to petition actually being able to be a right that citizens could exercise, and not being so burdensome that it was utilized primarily or wholly by special interest groups. At the time, the framers cited concerns that only well-organized and well-financed organizations could muster the necessary signatures, specifically mentioning the "UAW-CIO, 'school groups', and the Farm Bureau", that could end up being the primary utilizers of the right rather than ordinary citizens groups like Plaintiff. **(Exhibit R- Gary Gordon State Bar Article).**

[1] https://*ballotpedia.org/History_of_Initiative_%26_Referendum_in_Michigan*.

25. Upon information and belief, and upon attestation, in the current political climate, most if not all initiatives that qualify for the ballot have to raise a minimum of $2 million in order to have the resources to run and manage the scale and type of campaign necessary to qualify. **(Exhibit T- Silva affidavit).**

26. Upon information and belief, in the last few years, the primary funders of statutory initiatives in Michigan have been labor groups, the chamber of commerce or its affiliates, particular industries, or supported by billionaires.

27. Of most importance to this case is the distinction between statutory and constitutional initiatives. In 1971 the supreme court decided *Wolverine Golf Club v Secretary of State*, 384 Mich 461; 185 NW2d 392 (1971). The case involved a statutory initiative about daylight savings time. The court affirmed a lower court which ordered canvassers to accept and canvass statutory initiative petitions, though they were filed less than "10 days before the beginning of a session of the legislature," in violation of MCL 168.472. The statute had stood on the books for 30 years. The reason: article 2 section 9 did not permit the 10-day requirement:

> 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 the electorate. This constitutional procedure is self-executing.
> As pointed out by Judge Lesinski in the opinion below ... :
> "It is settled law that the legislature may not act to impose additional obligations on a self-executing constitutional provision. [citing cases]: '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.

> We hold that the petitioners were entitled to file their initiative petitions without regard to the ten day before session requirement..... *Woodland v Michigan Citizens Lobby*, said similarly of article 2 section 9:
>
> [It] is a reservation of legislative authority which serves as a limitation on the powers of the Legislature. This reservation of power is constitutionally protected from government infringement once invoked; once the petition requirements have been complied with, the state may not refuse to act.

28. An example of permissible "supplementary" legislation would be paper-size and type-size requirements for petitions, all of which Plaintiff complied with as its petition was approved by the BOE and BOC.

29. In 1973 the legislature amended the election law by adding 472a, the 180-day rebuttable presumption statute. The statute purports to apply to both types of initiative, statutory and constitutional.

30. MCL 168.472a is silent on the time period for how long a signature can be rebutted, but based on the Art. 2, Sec. 9, the historical periods, precedents, and language for longer periods, the 1974 OAG opinion, and case precedent, 4 years is the most logical time period.

31. Between enactment of the 1963 Constitution and MCL 168.472a in 1973, petitions were circulated for 4-year periods without any distinction for qualifying staleness of signatures beyond 180 days or for any time period whatsoever.

32. The popular bottle deposit initiative was enacted during this time period. *Consumers Power* aides our understanding of the 1986 policy that what it does not do is define the initiatory petition period to 180 days, or any length, for that matter.

33. While Plaintiff does not concede that the 180-day restriction is not facially invalid; any ruling upholding the legislature's ability to retrospectively apply such forms

of "legislative aid . . . in the areas of circulation and signing" (*Consumers id. at 9*) would seem to arm the legislature with an unbridled means to circumvent and impede the initiative process whenever it sees fit.

34. Considering initiatives are a crucial component of an effective checks and balances system built into the Michigan Constitution, use by citizens of such a tool must be scrupulously guarded, just like the independence of the judiciary. The Legislature cannot legislate away fundamental rights without a vote of the People to change the 1963 Constitution itself.

35. From 1973 to 1986, the BOE and BOC did not enforce the rebuttable presumption against signatures older than 180 days because Attorney General opinions declared and the general consensus of those in the know at the time was that it was unconstitutional.

36. In 1974 in OAG 4813, the attorney general (AG) opined the 180-day statute unconstitutional as to both types, with differing reasoning for each type. As to article 2 section 9 the AG wrote:

> 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 ... [the 180-day statute] is beyond the legislature's power to implement said section and is therefore unconstitutional and unenforceable.

37. Attorney General Frank Kelley further opined in OAG 4813 (**Exhibit F**), and repeated the language in OAG 5528 (**Exhibit G**):

> In OAG, 1973-1974, No 4813, p 171, 174 (August 13, 1974), it is stated:
> 'In other words, petitions and the signatures affixed to them are valid for as long as a particular basis (votes cast) remains in effect. 1963 Const, art 12, Sec. 2 and art 2, Sec. 9, both provide that the requisite number of signatures to initiative petitions is to be determined by a set percentage of votes cast for all candidates for governor at the last preceding general election at which a governor was elected. Therefore, the term for governor determines the time periods during which petitions may be circulated for signature and any signatures gathered during such a period are valid. Under 1963 Const, art 5, Sec. 21, the governor serves a period of four years. Hence, signatures on petitions are to be considered valid so long as they are gathered during a single four-year term bounded on both sides by a gubernatorial election.'

38. In the ensuing 12 years, initiative petitions, including some with signatures gathered more than 180 days before, were filed with the election bureau, certified by the canvassers, and approved by vote of the people.

39. In 1986 in *Consumers Power v Attorney General,* 426 Mich 1 (1986), the supreme court affirmed a judgment of the circuit court which overruled OAG 4813, but only "as applied" to constitutional initiatives under article 12 section 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 [the 1908 constitution] and the clear presence of one in [article 12 section 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.'"

40. There is no similar call for legislative action in article 2 section 9. Accordingly the decision did not disturb the holding of OAG 4813 that the section was self-executing, and that the rebuttable presumption is unconstitutional as applied to statutory initiatives.

41. In briefing *Consumers Power* in the circuit court, the successful plaintiff utility companies contrasted constitutional and statutory initiatives, arguing that unlike article 12 section 2, the purpose of article 2 section 9 was to "control legislative power" and

"curb legislative authority":

> Restrictions by the legislature upon the right to initiate legislation are contrary to the purpose of art 2 § 9. Both art. 2, § 8 and § 9 are direct responses to suspicion of the Legislature.... Article 2, §§ 8 and 9, on the other hand, are antagonistic to legislative authority....
> The plaintiff companies repeated this in oral argument:
>
> After [the 180-day statute] was enacted the Attorney General in 1974 ... issued an opinion [OAG 4813] in response to an inquiry regarding Article 2, Section 9, and declared that Article 2, Section 9, was self-executing, and cited the provisions and the findings and teachings of both the Court of Appeals and the Supreme Court in *Wolverine v Secretary of State*.... The Attorney General was constrained to conclude that Article 2 section 9 was self-executing; and therefore, the attempt to regulate the submission of petitions to initiate legislation, which by statute had to occur 10 days prior to the beginning – or no later that 10 days prior to the beginning of a legislative sessions was unconstitutional.
>
> Expressing no disagreement with the foregoing about article 2 section 9, AG counsel pointed in the oral argument to the practical effect of the 180-day statute, particularly on un-moneyed grass-roots groups such as the plaintiffs in the present case:
>
> [T]he convention comments, the delegates were concerned about limiting constitutional amendments or limiting the right of initiative to highly organized special interest groups rather than allowing access to this right by broad-based, loosely organized grass roots type organizations. If the circulation period is limited to six months, I would submit that it would effectively remove the right of the people as a broad-based group to go out and, I guess, casually, without a great deal of organization, without a great deal of money, to circulate petitions and come in with an adequate number. Exhibit 7, page 41. 29. The plaintiffs made no response to the AG's point about grass roots groups except to argue (successfully) the point was irrelevant in an action which (unlike the present case) arises under article 12 section 2. (**Exhibit T**).

42. The pleadings from Consumers Power, both in the Circuit Court (complaint and order of Judge Bell), and the Michigan Supreme Court, only applied to constitutional amendments, not statutory initiatives, and made clear distinctions between the ability of the Legislature to regulate the process differently, with no authority for the legislature to regulate statutory initiatives. (**See Exhibit T generally, complaint, order, MSC**

pleadings).

43. Noting the "silence" of the 1963 constitutional convention delegates on the issue of whether article 2 section 9 precludes aggregation of signatures collected before and after a gubernatorial election, the court of appeals held in a referendum case, *Bingo Coalition for Charity-- Not Politics v Board of State Canvassers*, it "does not."

44. In August of 1986, in the throes of a hot summer shortly before that year's election, litigation occurred over the sudden enforcement of the rebuttable presumption as political forces conspired to and succeeded in erecting ballot access barriers to keep L. Brooks Patterson from placing a death penalty amendment before Michigan voters, as well as preventing a proposal that would have allowed Michigan voters to vote to approve any utility rate increases. The BOC adopted, without any statutory or constitutional authority to do so, a policy for rebutting older signatures (**Exhibit E - 1986 BOC Policy Meeting minutes pps 6-8**).

45. Thirty (30) years later, for the first time since the policy was enacted in the summer of 1986, the BOC is attempting to force the proponent of an initiative to rebut the presumption posed by MCL 168.472a by either:

a. Proving that the person who executed the signature was properly registered to vote at the time the signature was executed and;

b. Proving with an affidavit or certificate of the signer that the signer was registered to vote in Michigan within the '180 day window period' and further, that the presumption posed under MCL 168.472a could not be rebutted through the use of a random sampling process.

46. It is obvious from the language of the law and the policy that the consensus was and has been that campaigns could continue to petition beyond 180 days, but a laborious policy was enacted that may have deterred any persons from ever attempting to exercise their rights due to the burdensome and unachievable nature of the process.

47. In 1998, the Qualified Voter File (QVF) was created pursuant to legislation. Historically local clerks maintained Michigan voter files in a decentralized fashion. With the creation of the QVF, the state has a centralized database of qualified electors. Michigan law states that anyone in the QVF is a qualified elector.

48. Various laws required the BOE to use the QVF to canvass any petitions. The state legislative mandate of using the QVF to canvass supersedes and renders null and void the 1986 rebuttal policy of the BOC as a matter of law, and is also in conflict with the earlier enacted rebuttable presumption of MCL 168.472a.

49. This being a conflict of laws issue, the more modern enactment of the QVF and its actual current use as customary by elections officials, contrasted with the never used 1986 policy, which would be absurd to implement and impossible to comply with, as well as more burdensome and costly for all parties, Plaintiff and Defendants, leads to a conclusion that the QVF canvassing mandate supersedes the 1986 BOC policy.

50. In 1999 the legislature enacted a new election law, MCL 168.473b, again curtailing the period within which signatures for a statutory (and constitutional) initiative could be collected:

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

51. This seems to clarify the issue somewhat that the time period for any approved petition is between gubernatorial periods, generally.

52. With very few initiatives ever qualifying due to the extreme burdens of ballot access, it is not often the legal or practical issues of initiative ballot campaigns receive the scrutiny of judicial review (approximately 7 have qualified at the ballot in the last 53 year, 1 every 7.57 years).

53. The 1986 BOC policy was not publicly available online or in statute, or publications. It was, and largely remains, a policy unknown to even most election attorney specialists. Upon learning that the BOC had enacted a policy for rebuttals, MILegalize reviewed the policy and concluded it was logistically and financially impossible to comply with it.

54. Starting in December of 2015, representatives of MILegalize participated in numerous hearings with the BOC to demonstrate that the process for rebutting signatures was unconstitutional and explore whether the policy was open for amendment to something more narrowly tailored and less burdensome, which also would avoid litigation. The BOE staff, apparently cognizant that the 1986 policy was unlawful and unworkable, crafted several proposed policy revisions, all of which were not adopted by the BOC at several meetings over many months—ultimately culminating in a 2-2 split vote at a BOC meeting on May 12 2016**,** the effect of which was to not adopt Director Thomas's final proposal for county clerks to use the QVF to rebut signatures.

55. Various members of the public, the state's top elections attorneys, and interest groups testified over a 5-month period regarding the rebuttable presumption policy. The majority of commentary was opposed to the 1986 policy and in favor of updating the

policy to use the QVF to rebut signatures. The only opposition to a policy update came from the Michigan Chamber of Commerce and the oil and gas industry, whose opposition apparently was to the new policy possibly allowing an anti-fracking petition to qualify. Of the persons commenting on the policy fourteen of the eighteen were in favor of updating the 1986 policy. The comments received by the BOE are attached as **Exhibit J**.

56. The original 1986 comments submitted at the time of the 1986 policy are attached as **Exhibit H** for historical perspective. The arguments discuss state and void, and how statutory initiatives differ from constitutional amendments as the Legislature has no authority to meddle with the initiative process.

57. A thorough record of experts, attorneys, BOE staff, and BOC members can be found in the various transcripts attached in relevant parts, and the testimony supports Plaintiff's claims:

Exhibit L - Board of Canvassers Meeting December 3, 2015 Transcript
Exhibit M - Board of Canvassers Meeting December 14, Transcript
Exhibit N - Board of Canvassers Meeting January 14, 2016 Transcript
Exhibit O - Board of Canvassers Meeting March 7, 2016 Transcript
Exhibit P- Board of Canvassers Meeting March 24, 2016 Transcript
Exhibit Q - Board of Canvassers Meeting May 12, 2016 Transcript

58. At the December 3, 2015 BOC meeting, BOE Director Christopher Thomas stated in regards to the superiority of using the QVF rather than the 1986 BOC policy, "So our data [BOE] does show the exact history of where and when people were registered. So there is new data that did not exist back then." (**Exhibit L, p. 40**). The December 14, 2015 transcript is also attached. **Exhibit M**.

59. At the January 14, 2016 BOC meeting, BOE Director Thomas stated, "It was brought up by Mr. Hank[s] that the current state of voter registration has changed significantly with a qualified voter file and that it would be much more efficient to use

that as a means to satisfy those two requirements. We have concurred in that since the qualified voter file, in fact, does contain that information and could be made available to the petitioners for the purposes of assisting them in rebutting the stale signatures." (**Exhibit N, p. 7**). Thomas further stated that "….the Governor's term of office still applies….." in regards to the petition time period. (**Exhibit N, p. 8**).

60. At the same meeting, noted elections attorney Gary Gordon stated in regards to the lack of thoughtful consideration in crafting the 1986 BOC policy that, "The existing policy is not a policy that was adopted after --- after a long consideration, and we are treating it like its some kind of Holy Grail that was--- that was adopted after – after, you know, great thought and so on. This policy was adopted very precipitously by the Board…." (**Exhibit N, p. 10**).

61. At the same meeting, Gordon noted that there is no statutory definition of stale or void, and not much thought was given to the definitions of either term. (**Exhibit N, p. 13**).

62. Mr. John, Pirich, another noted elections attorney, echoed Mr. Gordon's statements in discussion with Thomas about the vague nature of MCL 168.472a, and what the Legislature may have meant by those terms and how even those with the most elections experience could not agree on the definitions of the terms. (**Exhibit N pps. 14-26**). Ellis Boal, an attorney also testified and noted how Pirich and Gordon in their written comments to the BOC affirmed that no one knows what the term stale means. (**Exhibit N pps. 39, 41**).

63. Mr. Thomas, a widely respected state official, went further in his comments, stating that in regards to the 1986 policy and constitutional and legislative prerogative,

"…that we really should not rely on the policy developed in 1986 until such time as the legislature gives us clarity." (**Exhibit N, p. 24**).

64. Thomas further stated, in regarding the difference of burdens placed on petitioners between using the QVF versus the 1986 policy to rebut signatures, that an updated policy "….if adopted, would certainly make it much, much easier to rebut signatures…". (**Exhibit N, p. 25**).

65. Further testimony was provided by political and petitions expert Alan Fox, of Practical Political Consulting, whom provide Plaintiff with services to rebut signatures, and how also has experience in challenging initiative petitions. Fox stated in regards to the 1986 policy, "It bears no resemblance to how petitions are validated now." (**Exhibit N, p. 32**), and that the initiative process, particularly canvassing or attempting to rebut signatures is "….a monumental task; don't underestimate it. It's – it's not impossible, but it would be expensive and it will be time consuming in any petition organization that tries to do it will very rapidly discover that no matter how you do it, it's not an efficient process." (**Exhibit N, p. 34**).

66. At the March 7, 2016 meeting of the BOC, Director Thomas commented to the effect that in order for the BOE to canvass the petitions and do a random sample for validity as is common practice, the BOE would have to know whether to include signatures more than 180 days old. (**Exhibit O, p. 16**). Prior discussion included that commentators recommended just sampling a petition submission, which is Plaintiff's position also.

67. Gordon again testified on March 7, noting the lack of definition of stale and void and how different interpretations exist. (**Exhibit O, p. 25**).

68. At the same meeting Director Thomas stated that the logistics of the 1986 signor affidavits or clerk certifications were "…. a huge burden; not question about it." He also further stated an updated policy could "…..significantly reduce[d] the burden on the filer." (**Exhibit O, p. 35**).

69. At the March 24, 2016 BOC meeting, Jeffrey Hank testified how the BOE does not have an affidavit form even if a campaign would attempt to get, in the instance of Plaintiff, over 200,000 affidavits from signors. (**Exhibit P, p. 18-22**).

70. All undue burdens aside, without a guaranteed acceptable affidavit for individual signors, it would be unreasonable for Plaintiff to risk the effort and cost of securing signor affidavits only to find out after-the-fact that the affidavit form was insufficient.

71. At the same March 24 meeting, Attorney Ellis Boal testified and discussed with Director Thomas, who affirmed that the BOE was applying the holding of Consumers to statutory initiatives, despite the language of the holding only applying to constitutional amendments. (**Exhibit P, p. 24-26**).

72. On April 25, 2016, BOC member Norm Shinkle abruptly left in the middle of a BOC meeting, breaking quorum and preventing further discussion and action on an updated policy. This caused some relative excitement as reporters chased Mr. Shinkle out of the State Capitol as he claimed that he had a client to meet as the reason he left the meeting.

73. Nonetheless, MCL 750.478 makes it a crime for a public officer to engage in willful neglect of duty.

74. At the May 12, 2016 BOC meeting, discussion continued on the policy update, with Director Thomas presenting an updated proposal to the BOC, and stating that the

1986 policy is "….pretty laborious process with 1500 city and township clerks and 83 county clerks." (**Exhibit Q, p. 12**). Mr. Thomas also stated how several local clerks had contacted the BOE and declined to rebut signatures, presumably for either Plaintiff or the Michigan Cannabis Coalition.

75. Ultimately, the BOE put forward several updated proposals, none of which were adopted. **Exhibit K**.

76. On May 28, 2016, three days before Plaintiff's petitions were due to the state if Plaintiff was seeking to be on the 2016 ballot, the Michigan House passed SB776 purportedly with immediate effect. The House vote broke down 57-52, largely along partisan lines, with all Democrats voting against it, and six Republicans also voting against it.

77. On June 1, 2016, Plaintiff filed approximately 354,000 signatures on petitions to qualify for the statewide ballot. Any campaign seeking to place an initiative on the ballot had to submit at least 252,523 signatures to qualify.

78. Plaintiff submitted petitions with potentially more than 100,000 extra signatures than the minimum requisite threshold.

79. On June 6, 2016, the BOE issued a staff recommendation to the BOC that Plaintiff failed to submit enough signatures for ballot qualification due to more than 200,000 of Plaintiff's signatures being collected more than 180 days prior to submission, and the basis for not accepting those signatures was the 1986 BOC policy.

80. On June 6, 2016, Michigan Governor Rick Snyder signed into law SB776 with immediate effect, which for the first time in Michigan history would limit the time period

that Michigan citizens have to circulate petitions for statutory initiatives and constitutional amendments.

81. SB776 amended MCL 168.472a to:

> 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.

82. It is apparently the position of the BOE that SB776's amended language does not apply to Plaintiff as Plaintiff filed its petitions with the state prior to the amendment being signed by the Governor, filed with the Great Seal, or made effective.

83. Regardless which version of the 180-day statute is applied to Plaintiff, both violate article 2 section 9 of the 1963 Michigan constitution, under *Wolverine Golf Club v Secretary of State,* regardless that a later case *Consumers Power v Attorney General* upheld the rebuttable presumption language as applied to petitions to amend the constitution under constitution article 12 section 2.

84. Article 2 section 4 of the constitution requires the legislature to "enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution."

85. Article 2 section 9 covers both referenda and legislative initiatives (also called statutory initiatives). Approved by con-con delegates in 1961-62 and enacted by the voters in 1963, it provides as to statutory initiatives:

> § 9 Initiative and referendum; limitations; appropriations; petitions.
> 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 for initiative ... of the total vote cast for all candidates for governor at the last preceding general election at which a

> governor was elected shall be required.
> ...
> Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature....
> If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election....
> Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature....
> The legislature shall implement the provisions of this section.

86. Implementing statutes under article 2 section 9 are found at MCL 168.471 et seq. Together they provide, in general terms, that an initiating entity asks defendant canvassers to approve the format of a petition, which must contain both a short summary and the exact wording of the proposed statute, including strikeouts of any provisions which will be eliminated. The initiator prints and distributes petitions to circulators who begin collecting signatures on a date chosen at the discretion of the initiator. The circulators get the signature, printed name, street address, voting jurisdiction, zip code, and date of signing from registered voters throughout the state who want to see the measure on the ballot. In signing, a signer asserts he/she is a "qualified and registered elector" on the "actual date the signature was affixed."

87. After collecting sufficient signatures, the initiator files the petitions containing them with the defendants.

88. The initiator may file the petitions at any time but in order to get the proposal on the ballot of a particular election, the filing must be by or before a cut-off date 160 days

in advance. For the November 2016 election the cut-off date is June 1; for the November 2018 election the date is May 30; for the November 2020 election the date is May 27.

89. Under the version of MCL 168.472a applicable here (prior to SB776), signatures more than 180 days old on the date of filing are subjected to a rebuttable presumption against them. Under the amended version of SB776, those signatures would be rejected altogether.

90. Defendants canvass the signatures. The term "canvass" is not defined and the method is not specified in the constitution or statutes. But it is "impossible to canvass" in a timely way every one of the hundreds of thousands of signatures on a petition. Accordingly the defendants typically choose a random sample of 500 or more signatures. They test the sample for validity using the "qualified voter file" (QVF).

91. The state established the QVF in 1997 and it has evolved overtime. The QVF documents registered voters in the state. Any resident who is in the QVF is officially considered a voter registered in Michigan. For every voter, the QVF includes the date of registration, street address, and other data. A document of defendant SOS, "The Michigan Qualified Voter File: A Brief Introduction," explains the nature of the QVF:

> While the QVF project was originally conceived as a response to the inefficiencies of the state's highly decentralized voter registration system ... the implementation of the National Voter Registration Act (NVRA) [52 USC 20501 et seq, a/k/a the 1993 "motor voter" law] greatly heightened the need for such an initiative. ... [T]he QVF links election officials throughout the state to a fully automated, interactive statewide voter registration database to achieve a wide variety of significant advantages....

92. The testing process used by the BOE by utilizing a random sample of submitted signatures compared to the QVF determines a validity rate for signatures in the sample, expressed as a percent. This rate is then multiplied by the total signatures filed by the

initiator. The product is said to be the number of qualified and registered elector signatures filed. Per article 2 section 9, for both 2016 and 2018 that number will be compared to 252,523, the number which is obtained by taking 8% of the number of those who voted for governor in 2014.

93. There is no practical reason the current sampling method could not be used to test signatures more than 180 days old for qualified elector status, and that due to the acknowledgement that things like canvassing or rebutting signatures are "labor intensive" and inefficient, and how defendants "makes it easy…." to check qualified elector status, as well as preventing fraud, and "…..eliminating much of the paperwork involved in tracking changes in voter registrations….", there is no rational basis even for imposing the 1986 BOC policy on Plaintiff when the QVF exists.

94. The SOS cites on its website that the QVF "Plays a Vital Role in Michigan's Election System[2]" (**emphasis added**):

> One of the unique challenges Michigan has faced is how to effectively administer an election system made up of election officials, administrators, clerks and poll workers from 83 counties, 277 cities, 1,240 townships and 256 villages.
>
> Add to that more than 7.4 million registered voters and the magnitude of the problem quickly becomes apparent. With such a large electorate, even straight-forward tasks such as updating voter rolls when people move to new jurisdictions become **labor intensive**. Unlike many other states which keep election records at the county or state level, Michigan's voter registration and participation records are kept at the local level.
>
> Given the size and complexity of Michigan's election system, one of the most significant developments to its elections management has been the Qualified Voter File (QVF).

[2] Qualified Voter File (QVF)Plays a Vital Role in Michigan's Election System, available online as of June 14, 2016 at http://www.michigan.gov/sos/0,8611,7-127-1633_8716-27675--,00.html

> The QVF is a statewide computerized system that has made a tremendous impact. Among its many benefits, the **QVF makes it easy** for the Department of State to accurately and quickly forward registration information from its branch offices to local election officials. The QVF also reduces the chance for election fraud. When the QVF was first developed, more than 600,000 duplicate and ineligible registrations were removed from the state's voter rolls.
>
> In addition, the **QVF eliminates much of the paperwork** involved in tracking changes in voter registrations, making for a more effective and efficient process.
>
> More than 400 communities are connected to the QVF server in Lansing through the Internet, including the state's 83 county clerks who function as a QVF source for about 1,200 smaller cities and townships. The QVF has been designed to assist local election officials with many of their duties, including petition and candidate tracking; keeping an electronic election calendar; and absent voter processing.
>
> With the implementation of the QVF, Michigan has moved its election management system into the 21st century. Under the QVF, Michigan effectively meets the needs of a growing and increasingly mobile voter population while maintaining the integrity of the election process.

95. After canvassing the petitions, if defendants determine the initiator submitted more than 252,523 valid signatures, they certify the measure, at which point the remaining provisions of article 2 section 9 kick in, including consideration by the legislature. The path to the ballot and a vote of the people occurs after the legislature either votes against it or takes no action.

96. It is a misdemeanor criminal offense under Michigan law to sign a petition twice. Every petition must contain the language, "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."

97. The absurdity of it being a crime to sign twice unless someone is knowingly committing fraud, and then placing undue burdens such as clerk certifications or signor affidavits on certain signatures, complicates ballot access because rather than going through such a laborious process as the 1986 policy suggests, people could just sign the petition again and an older signature could be discarded—but Plaintiff is loathe to place hundreds of thousands of Michigan citizens in potential criminal jeopardy simply for exercising their First Amendment rights of free expression, assembly, protest, redress for grievances, and to petition, by signing the petition again in an attempt to get a more 'fresh' signature from the same person.

98. The term rebuttable presumption seems to appear only 7 times in Michigan election law, once in MCL 168.472 dealing with the 180 day policy, and six other times all relating to various initiative and recall petition laws where the QVF is checked to determine qualified elector status, and if the QVF indicates the person is not a qualified elector, there is an opportunity to rebut that presumption by submitting evidence. For initiatives *see*:

> 168.476 Petitions; canvass by board of state canvassers; use of qualified voter file; hearing upon complaint; investigations; completion date; disposition of challenges; report.
> Sec. 476. (1) Upon receiving notification of the filing of the petitions, the board of state canvassers shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors. The qualified voter file shall be used to determine the validity of petition signatures by verifying the registration of signers and the genuineness of signatures on petitions when the qualified voter file contains digitized signatures. If the qualified voter file indicates that, on the date the elector signed the petition, the elector was not registered to vote, there is a **rebuttable presumption** that the signature is invalid. If the qualified voter file indicates that, on the date the elector signed the petition, the elector was not registered to vote in the city or township designated on the petition, there is a **rebuttable presumption** that the signature is invalid. If the board is unable to verify the genuineness of a

> signature on a petition using the digitized signature contained in the qualified voter file, the board may cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which the petitions were circulated, to determine the authenticity of the signatures or to verify the registrations. Upon request, the clerk of any political subdivision shall cooperate fully with the board in determining the validity of doubtful signatures by rechecking the signature against registration records in an expeditious and proper manner.

See also for recalls:

> 168.961(6) The qualified voter file shall be used to determine the validity of recall petition signatures by verifying the registration of signers. If the qualified voter file indicates that, on the date the elector signed the recall petition, the elector was not registered to vote, there is a **rebuttable presumption** that the signature is invalid. If the qualified voter file indicates that, on the date the elector signed the recall petition, the elector was not registered to vote in the city or township designated on the recall petition, there is a **rebuttable presumption** that the signature is invalid……
>
> **168.961a(4)** The qualified voter file may be used to determine the validity of a challenged petition signature appearing on a recall petition by verifying the registration of the signer. If the qualified voter file indicates that, on the date the elector signed the petition, the elector was not registered to vote, there is a **rebuttable presumption** that the signature is invalid. If the qualified voter file indicates that, on the date the elector signed the petition, the elector was not registered to vote in the city or township designated on the petition, there is a **rebuttable presumption** that the signature is invalid. (**emphasis added**).

GENERAL ALLEGATIONS & FACTS ABOUT THE MILEGALIZE CAMPAIGN AND ACTIONS OF DEFENDANTS

99. Plaintiff restates each allegation as if restated herein.

100. The Michigan Comprehensive Cannabis Law Reform Committee is a registered Michigan ballot question committee a/k/a MILegalize. The committee is currently comprised of a volunteer board of directors of fifteen registered voters from across the state.

101. Despite its lack of formal structure and organization and its short existence as any sort of political movement, the campaign has evolved into a larger network of supporters

numbering in the tens of thousands that regularly engage with the campaign as volunteers or through events and social media on a daily basis.

102. MILegalize formed as a ballot committee in April, 2015, and had its petitions approved as to form by the BOC on June 11, 2015.

103. MILegalize began circulating petitions on June 25, 2015, on the steps of the Michigan Capitol as an all volunteer effort, with less than $10,000.00 in campaign contributions, and from that point forward over a course of 11 months raised and spent more than $1.1 million dollars towards achieving ballot access as of June 1, 2016.

104. MILegalize upended conventional wisdom and petitioned on and campaigned to educate Michigan voters about the initiative proposal through the cold and dark winter months of late December, January, February, and March, even though the ability to collect signatures was severely hampered by weather.

105. On June 1, 2016, MILegalize submitted at least 354,000 signatures to the Bureau of Elections to qualify for the next general election ballot.

106. Plaintiff apparently lays claim to being the first "grassroots" (no pun intended) cannabis legalization campaign in the United States to ostensibly qualify for statewide ballot access without national lobbying groups providing resources or large out-of-state funders. If Plaintiff prevails, Michigan will join California, Maine, Massachusetts, Arizona, Nevada, and maybe several other states in voting for cannabis legalization in 2016. If Plaintiff's case is delayed due to litigation, it will likely join other states in 2017 or 2018 when Plaintiff would be on the next regular election ballot, joining Colorado, Washington, Oregon, Alaska, and Washington D.C. as legal cannabis states.

107. In 2016, MILegalize was the only approved ballot committee out of 12 potential currently registered statewide which met the statutory burden to file enough signatures to qualify for the ballot. The other groups, with the exception of the CBFM campaign, all either quit due to lack of signatures or financial resources to accomplish ballot qualification. In 2015, no groups qualified for the ballot either (which would be the same 2016 ballot), with one campaign, a petition to abolish prevailing wages, being disqualified after being found to have submitted more fraudulent and duplicate signatures than any campaign in Michigan initiative history.

108. Over a course of 11 months, MILegalize collected over 375,000 signatures for a statutory initiative, with at approximately 1,000 people circulating petitions.

109. MILegalize spent the majority of the funds it raised paying petitioners to collect signatures.

110. Upon information and belief, experts estimate that in most instances, especially within a 180-day time limit, it requires at least $2-3 million dollars for a campaign to successfully reach the ballot.

111. The company that Plaintiff hired to pre-screen its own petitions to the extent possible, Practical Political Consulting (PPC), was also involved in disqualifying the prevailing wage petition. PPC prepared initial proofs for Plaintiff to rebut any older signatures if necessary, and such proofs were provided to the BOE at the time of filing.

112. When Plaintiff filed its petitions, it included information that could be used for the rebuttal process despite no statutory guidance on what is required to do so. Plaintiff submitted this information upfront in good faith in an attempt to rebut the majority of its signatures that may need to go through a rebuttal process and in order to speed up the

qualification process.

113. While Michigan law apparently does not provide for the supplemental filing of additional petitions after June 1, there is no prohibition on rebutting the presumption of any challenged or refused signature with supplementary documentation after the fact if necessary, and Plaintiff is able to reasonably assist in clarifying or rebutting the alleged staleness of any signatures if given a proper due process opportunity to do so after canvassing.

114. There were a number of additional pages filed that would require the opportunity to rebut if MCL 168.472a is enforced, and Plaintiff intended on supplementing information on those pages as soon as possible during any due process opportunity to rebut, or, if the BOE or SOS, which have authority to compel clerks to take actions, assist in the rebuttal process (which makes no sense, it is a waste of time because the BOE can just sample the signatures like it already is legally required to do using the QVF).

115. Of the lines on the pages documented at the time of filing, according to the affidavit of Alan Fox of PPC:

> - 137,029 lines contain information from QVF and no comment in the EXPLANATION column. These are our rebuttals
> - 54,669 lines are noted as 'NO REBUTTAL.' These are signed lines for which we have no rebuttal of the presumption of staleness at this time.
> - 91,570 lines are noted as blank or crossed out or are conceded as invalid for reasons other than the date of signature
> - 1,794 lines were signed on or after December 5, 2015 and are noted as not requiring rebuttal. Any other line that on its face has a signing date of December 5, 2015 or later but is not noted as such in the file should be similarly treated even if the notation in the file indicates otherwise.

116. The electronic file submitted along with the petitions is a comma-delimited text file containing 285,061 lines, including a header line with column names.

117. Despite these efforts and this submission, the campaign provided notice to the BOE that it does not waive any rights or privileges, and reserves all rights, due process and opportunities to hereafter rebut any presumption of staleness raised by the BOE, the BOC, or any other person or entity, with fair and adequate notice and opportunity to be heard.

118. On June 7, 2016, the Bureau of Elections publicly issued a staff report saying that because some of MILegalize's petition signatures were collected beyond a 180-day window, those signatures would not be counted towards ballot qualification, and therefore, that the BOE would recommend to the BOC that the campaign had submitted an insufficient number of signatures for ballot qualification.

119. On June 7, 2016, Governor Snyder signed SB776 into law with immediate effect.

120. On June 9, 2016, the BOC accepted the staff recommendation to not count all of MILegalize's submitted signatures.

121. On June 14, 2016, five business days later, Plaintiff timely filed this suit.

122. Plaintiff has devoted substantial time and resources, including countless volunteer hours, all of which will have been wasted if the rule of article 2 section 9, *Wolverine Golf Club*, *Woodland v Michigan Citizens Lobby*, and *Bingo Coalition for Charity--Not Politics v Board of State Canvassers* and the First, Fifth, and Fourteenth Amendments to the US Constitution are not upheld.

123. Plaintiff reasonably and foreseeably relied on the long history of campaigns petitioning beyond 180 days when it started its campaign, and before investing substantial time, sweat equity, energy, labor, resources, and money into the effort.

124. Plaintiff reasonably and foreseeably relied on defendants following AG Opinion 4813 and not applying the rebuttable presumption to statutory initiatives due to Michigan law requiring the BOE and BOC to follow AG opinions generally.

125. Plaintiff reasonably and foreseeably relied on defendants annual publications, whereby it is stated to contact the BOE for discussion on how to rebut signatures.

126. Plaintiff detrimentally relied on the expected obligations of defendants upholding the US and Michigan Constitutions, including the First Amendment and Art 2, Sec 9.

127. Defendants published and distributed a regular (annual or longer) official statement regarding rebuttable presumptions, implying that a campaign can petition beyond 180 days, but leaving vauge, even over the years, what the standard was or how it could be achieved. The same language appears to have been used in the few examples of publications from the SOS from various years including 2008 and 2015, in relevant part:

> **Circulation Period**
> Michigan election law, MCL 168.472a, states, "It shall be rebuttably presumed that the signature on a petition that 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." Given this provision, signatures more than 180 days old on the date an initiative petition is filed are not counted unless shown to be valid by the proponents of the initiative. Information on the procedure for rebutting the presumption of signature invalidity provided under MCL 168.472a is available from the Michigan Department of State's Bureau of Elections. (emphasis added).

128. Plaintiff reasonably and foreseeably relied on the same language in the 2015 memo, and by submitting information to the BOE when filing was offering proof on an initial 137,000-plus voters Plaintiff is currently able to rebut, with confidence that Plaintiff can rebut more with more time and money to spend, or through clerks actually agreeing to assist in rebuttals as the 1986 policy indicated, or more preferably, by the

BOE using the QVF to canvass first with a random sample so that Plaintiff can rebut any challenged signatures on an individualized basis.

129. Additionally, in no way does Plaintiff concede that the BOE should not review for qualified elector status all signatures that Plaintiff filed, including many that were more than 180 days old at the time of filing but that Plaintiff could not rebut at the end of the petition drive for logistical reasons, for example when petitions were delivered from across the state by volunteers on the last day of the petition drive right up until turn in to the Bureau of Elections on June 1, 2016. These signatures include the 54,669 signatures Plaintiff noted while filing with the BOE, and also several thousand additional signatures that were not part of Plaintiff's initial attempt at good faith qualification with the rebuttable presumption and with cooperation with defendants due to the uncertainty regarding the legal status of the 1986 policy, MCL 168.472a, and SB776.

130. Election deadlines, rules, laws and good order should not be such a mystery nor subject to such disruption by defendants or the Michigan Legislature in this instance, due to constitutional deference to Art 2, Sec 9.

131. Plaintiff has standing because "petition signers possess a legally protected interest in having their signatures validated, invalidated, empowered, or disregarded according to established law....", and because both the BOE and BOC have failed to canvass Plaintiff's petition.

132. The legislature already has a constitutional role in the indirect statutory initiative process, constrained to the following: implementing procedures which do not curtail the people's right to initiative, voting on the proposal in 40 session days adopting or rejecting it; and after a measure passes it can amend the law by a ¾ vote in house and senate.

133. By "curtailing" the signature collection period both versions of the 180- day statute "restrict the utilization of the initiative petition and lack any current reason for so doing," and most certainly do not comport with a strict scrutiny analysis.

134. There is no reason to think that citizen "suspicion" of the legislature, "antagonism" to it, and desire to "control" its power and "curb" its authority have diminished in recent years. *Deeleuw v State Board of Canvassers*, 263 Mich App 497, 505 (2004).

COUNT I- MANDAMUS

135. Plaintiff restates each prior allegation as if restated herein.

136. Defendant BOE had a clear legal duty to timely canvass and qualify the initiative, which would trigger timelines for creating the ballot summary language, and failed to do so. Plaintiff could not sue for mandamus until the petitions had been rejected. Plaintiff acted timely, filing suit five business days after the BOC accepted the staff recommendation to reject the petitions, before filing suit to enforce the law.

137. A writ of mandamus shall issue if 1) the party seeking the writ has a clear legal right to the performance of the duty sought, 2) the defendant has a clear legal duty to perform the act requested, 3) the act is ministerial, and 4) no other remedy exists that might achieve the same result. *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 284; 761 NW2d 210 (2008). Therefore, this court should issue an order of mandamus compelling defendants to certify the petitions as valid and for the BOE to proceed with canvassing and qualifying the initiative on the next regular election ballot.

138. Michigan's Supreme Court has recognized that one of the "primary missions" of the Attorney General is to give legal advice to the Legislature, and to departments and agencies of state government. *East Grand Rapids School Dist v Kent County Tax Allocation Bd*, 415 Mich 381, 394; 330 NW2d 7 (1982).

139. Defendants, state agencies, were on clear legal notice under AG 4813 and AG 5528, that the State of Michigan's official position was that the rebuttable presumption is unconstitutional, at least as applied to statutory initiatives.

140. It is well-settled Michigan law that state agencies must follow the orders of the attorney general opinions unless a court or other higher authority directs them otherwise. *See Michigan ex rel. Oakland Co. Prosecutor v. Dep't of Corrections*, 199 Mich.App. 681, 691, 503 N.W.2d 465 (1993) (an opinion of the Attorney General is binding on state agencies and officers).

141. After Plaintiff filed 354,000 potentially valid signatures with the Bureau, over 100,000 more than legally required to, and Plaintiff having complied with all laws, approvals, rules, policies and procedures to circulate and file initiative petitions otherwise, Plainitiff had a legal right to have its petitions canvassed by the BOE, and Defendants had a clear legal duty to canvass the petitions.

142. The acts required of Defendants to canvass and fairly process Plaintiff's petitions for ballot qualification are ministerial, and no other remedy besides mandamus exists to achieve the same result.

143. The enforcement of both the 1986 policy and the rebuttable presumption of MCL 168.472a harm Plaintiff financially, at least $690,000.00 in damages for actual costs of signatures Plaintiff has been unjustly deprived of if any of Plaintiff's submitted signatures

are not fully canvassed; or $1.1 million dollars if all of Plaintiff's submitted signatures are not fully canvassed.

COUNT II- THE 1986 BOC POLICY VIOLATES THE 1ST AMENDMENT, US and MICHIGAN CONSTITUTIONS AND FAILS STRICT SCRUTINY REVIEW BY PLACING UNDUE BURDENS ON A FUNDAMENTAL RIGHT

144. Plaintiff restates each prior allegation as if restated herein.

145. Plaintiff brings this civil rights action under 42 USC 1983 et seq., US Constitution First Amendment, and Michigan Constitution Article I, Sections 1, 3, 5, 17, AND ARTICLE II, Sections 1 and 4.

146. According to affidavits of Plaintiff's campaign managers, it is logistically and financially not just overly burdensome, but impossible, to secure affidavits from petition signors more than 180 days old, and to secure affidavits from local clerks. (**Exhibits T, U).**

147. Local clerks have no legal duty to assist in the rebuttal process, and BOE Director Thomas stated several times that clerks do not have a legal duty to comply with a petitioner's request to assist in rebutting signatures.

148. Upon information and belief at least one other ballot question committee, the Michigan Cannabis Coalition, also attempted to rebut signatures with county clerks, and out of 83 possible clerks, only the Macom and Antrim county clerks attempted to comply. Regardless, county clerks were not the clerks mandated by the 1986 policy to provide rebuttal certification.

149. Obviously, if clerks refuse to assist or comply with the rebuttal of signatures, there is no way for a person to actually exercise the right.

150. Upon information and belief, several clerks refused to assist both MILegalize and the Michigan Cannabis Coalition, and correspondence from the BOE to clerks that contacted the Bureau in writing the BOE instructed clerks that there was no legal authority for them to rebut. (**Exhibit I**).

151. Upon information and belief, none of the 1500-plus elected or appointed local or county clerks in Michigan have ever received any training or guidance from the BOE on the rebuttable presumption policy.

152. The 1986 BOC policy also seems to run afoul of the 1978 Headlee amendment, purporting to require an unfunded mandate to local clerks to perform a duty state defendants are required to perform (canvassing a statewide petition), while not providing appropriations to do so, in violation of Art 9, Sec 29.

153. The state's compelling interest in this instance is in requiring that only qualified electors sign petitions to place matters on statewide ballots and preventing election fraud. To the extent there is an additional interest in the purity of elections, the use of signor affidavits does nothing to satisfy that interest. A signor could attest to being registered, but not actually be. Clerk certification could satisfy qualified elector status with more reliability, but only on a case-by-case basis and only locally, with nowhere near the most superior quantum of proof, the SOS's Qualified Voter File, which the BOE maintains with far superior capabilities for canvassing the petitions.

154. Requiring either signor or clerk affidavits or certifications is not narrowly tailored to achieve any compelling state interest, nor is it the least burdensome means to accomplish any interest. In fact it is about as burdensome as it can get—it extinguishes any exercise of the right altogether.

155. The enforcement of both the 1986 policy and the rebuttable presumption of MCL 168.472a harm Plaintiff financially, at least $690,000.00 in damages for actual costs of signatures Plaintiff has been unjustly deprived of if any of Plaintiff's submitted signatures are not fully canvassed; or $1.1 million dollars if all of Plaintiff's submitted signatures are not fully canvassed.

COUNT III- BOTH THE TERMS "REBUTTABLE PRESUMPTION" AND "STALE" OF MCL 168.472a VIOLATE THE US AND MICHIGAN CONSTITUTIONS, THE FIRST AMENDMENT AND ARE VOID FOR VAGUENESS

156. Plaintiff restates each prior allegation as if restated herein.

157. Plaintiff brings this civil rights action under 42 USC 1983 et seq. US Constitution First Amendment, and Michigan Constitution Article I, Sections 1, 3, 5, 17, AND ARTICLE II, Sections 1 and 4.

158. Under well-established rules of statutory construction, every statute is to be enforced according to its plain meaning. *Roberts v Mecosta County Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). And "[e]ach word of a statute is presumed to be used for a purpose." *Levy v Martin*, 463 Mich 478, 493-494; 620 NW2d 292 (2001), quoting *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). Effect must be given to "every word, phrase, and clause in a statute" so as to "avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire and Cas Co v Old Republic Ins Co,* 466 Mich 142, 146; 644 NW2d 715 (2002).

159. The term "rebuttable presumption" is not defined in Michigan election law.

160. As noted above, the uses of "rebuttable presumption" in Michigan election law all include the mandatory canvas of the QVF to determine qualified elector status, and the ability to rebut a determination that a person is not a qualified elector as indicated by the

QVF, after-the-fact. The same should be true for the unique use of the term "rebuttable presumption" in MCL 168.472a.

161. The term "stale" is not defined in Michigan election law.

162. Two of the state's top recognized elections lawyers, Mr. John Pirich and Mr. Gary Gordon, were stumped and could not provide any coherent definition during joint testimony at BOC meetings on when asked what stale meant, and in their written submissions.

163. The BOE also could not define the term stale. No other testimony was offered by any party as to the definition of stale in MCL 168.472a.

164. According to briefs filed in the *Consumers Power* case by some of the state's top elections attorneys John Pirich, Gary Gordon, Michael Hodge and others, as well as the position of the State of Michigan and the People's Lawyer Attorney General Frank Kelley, the MCL 168.472a rebuttable presumption was enacted largely to prevent the prevalence of duplicates that can become more frequent the longer a petition is circulated, as normal persons on the street either forget whether they have signed the petition, or may even think it is a different petition they are signing. (See generally **Exhibit S)**.

165. The other argument raised in 1986 for the definition of stale was that it was meant to preclude signatures collected prior to the last gubernatorial election which bounds the petition campaign. (See generally **Exhibit S**).

166. The enforcement of both the 1986 policy and the rebuttable presumption of MCL 168.472a harm Plaintiff financially, at least $690,000.00 in damages for actual costs of signatures Plaintiff has been unjustly deprived of if any of Plaintiff's submitted signatures

are not fully canvassed; or $1.1 million dollars if all of Plaintiff's submitted signatures are not fully canvassed.

COUNT IV- BOTH THE 1986 BOC POLICY AND THE REBUTTABLE PRESUMPTION OF MCL 168.472a VIOLATE 1963 MICHIGAN CONSTITUTION ART 2, SEC 9

167. Plaintiff restates each prior allegation as if restated herein.

168. Plaintiff brings this civil rights action under 42 USC 1983 et seq. and Michigan Constitution Article I, Sections 1, 3, 5, 17, AND ARTICLE II, Sections 1 and 4.

169. The Legislature is prohibited by the self-executing language of Art 2, Sec 9, from enforcing the rebuttable presumption of MCL 168.472a, as Art 2, Sec 9 is self-executing, as opposed to Art 2, Sec 12, constitutional amendments, which section does not have self-executing language.

170. The Supreme Court already ruled that MCL 168.472 is unconstitutional "The requirements of this section constitute an unnecessary and unreasonable restraint on the constitutional right to initiate legislation, as provided for by Const 1963, art 2, § 9." *Wolverine Golf Club v Secretary of State*, 384 Mich 461; 185 NW2d 392 (1971).

171. *Wolverine* declared Sec 472 unconstitutional, and the same grounds and reasoning apply in this case to Sec 472a:

> Sec. 472. Petitions to initiate legislation shall be filed with the secretary of state not less than 10 days before the beginning of a session of the legislature. **History:** 1954, Act 116, Eff. June 1, 1955. **Constitutionality:** The requirements of this section constitute an unnecessary and unreasonable restraint on the constitutional right to initiate legislation, as provided for by Const 1963, art 2, § 9. *Wolverine Golf Club v Secretary of State*, 384 Mich 461; 185 NW2d 392 (1971).

172. Considering the language of Art 2, Sec 9; the *Wolverine* ruling; the AG opinions; and historical facts, MCL 168.472a violates Art 2 Sec 9 on its face and as applied.

173. The enforcement of both the 1986 policy and the rebuttable presumption of MCL 168.472a harm Plaintiff financially, at least $690,000.00 in damages for actual costs of signatures Plaintiff has been unjustly deprived of if any of Plaintiff's submitted signatures are not fully canvassed; or $1.1 million dollars if all of Plaintiff's submitted signatures are not fully canvassed.

COUNT V- UNLAWFUL REGULATORY TAKINGS UNDER THE 5TH AMENDMENT

174. Plaintiff restates each prior allegation as if restated herein.

175. Plaintiff brings this civil rights action under 42 USC 1983 et seq.

176. Plaintiff raised and spent from its donor base approximately $1.1 million to achieve ballot qualification for this measure. Plaintiff's largest donor attests that he invested $450,000.00 in the campaign in reliance of signatures his money was purchasing being fairly and lawfully canvassed by defendants. Plaintiff's foreseeable and reasonable investment backed expectations that signatures beyond 180 days old at the time of filing, were either not subject to any rebuttable presumption, or if they were, it is an after-the-fact of canvassing due process opportunity for Plaintiff to rebut the presumption that any signature the BOE or BOC rejects is valid and not stale, not the unconstitutional 1986 BOC policy that would be used as the quantum of proof for rebutting staleness.

177. The enforcement of this policy, and any attempt to enforce SB776 or any other time period that does not include all of Plaintiff's signatures as potentially valid with a fair opportunity for rebuttal after canvassing, is a regulatory takings of Plaintiff's property in violation of Plaintiff's constitutional 5th amendment rights as the signatures that are being disqualified have a fair-market value of a minimum value of approximately

$690,000.00 that Plaintiff is being deprived of through the unlawful and unjust actions of defendants, without due compensation.

178. In this instance, Plaintiff seeks redress in the form of financial compensation from defendants if the court finds for any reason that defendants that have deprived Plaintiff of valuable use of its property, in the amount of at least $690,000.00, or the fair market value for Plaintiff to purchase signatures for an initiative under the now enacted 180-day strict time limit of SB776, is approximately $2,000,000.00.

179. The Fifth Amendment of the United States Constitution provides people with protections against takings of their property without public purpose and just compensation. Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984).

180. Public purpose must be proven by defendant in order to justify a taking.

181. Article I Section 1 of the Michigan Constitution perhaps says it best: All power is inherent in the people. Government is instituted for their equal benefit, security and protection.

182. This constitutional provision together with the long list of constitutional rights being abridged as argued throughout this Complaint, defendant certainly lacked a public purpose in taking plaintiff's property.

183. Absent public purpose the taking fails the 5th Amendment. Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984).

184. Even if public purpose were found, just compensation shall be paid for all takings, which has been judicially interpreted to mean the fair market value. In a 180-day world this would be $3,000,000, because that is what it would take.

185. The United States Supreme Court's Justice Oliver Wendall Holmes held in 1922 that "while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking." Pennsylvania Coal v. Mahon, 260 US 393 (1922).

186. In determining whether a regulation effectively deprives an owner of property depends in part on the extent to which the regulation has interfered with distinct investment backed expectations of the property owner. Penn Central v. New York City 438 US 104, 124 (1978).

187. Plaintiff invested about $1.1 million with plaintiff's distinct investment backed expectation of getting the ballot question on the November 2016 ballot.

188. Defendant's total abridgment of this expectation constitutes a regulatory taking, for which plaintiff is entitled to both a striking down of the 180-day policy and statute as well as just compensation for the temporary taking and attorney's fees.

COUNT VI - DUE PROCESS VIOLATIONS, ARBITRARY AND CAPRICIOUS ACTIONS VIOLATE 5TH AND 14TH AMENDMENTS

189. Plaintiff restates all prior allegations as if restated herein.

190. The enforcement of both the 1986 BOC policy and the rebuttable presumption of MCL 168.472a are both arbitrary and capricious. A ruling of an administrative agency "is arbitrary and capricious when it lacks an adequate determining principle, when it reflects an absence of consideration or adjustment with reference to principles, circumstances, or significance, or when it is freakish or whimsical." *Wescott v Civil Serv Comm*, 298 Mich App 158, 162; 825 NW2d 674 (2012). In this instance, when defendants did not even enforce the statute in question for 13 years because it was the state's position it was unconstitutional, then defendants attempted to enforce a 1986 policy which the BOC had no authority to enact, then it used that same 1986 policy which everyone acknowledges is

unworkable, all while having a computer database, the QVF, which can prove the registration of every Michigan qualified elector, certainly lacks principle and consideration, fails to adjust when clearly needed to real world facts, and is so whimsical when the state is also required under current law to canvass petitions using the QVF!

191. The failure to canvass Plaintiff's petitions, when Plaintiff has offered good faith proof of qualified elector status to rebut any presumption of staleness under MCL 168.472a, and Plaintiff not being offered a fair opportunity to dispute any presumption after a fair canvass of Plaintiff's petitions has occurred, violates Plaintiff due process rights, and the due process rights of 200,000-plus signors of Plaintiff's petitions whose signatures are more than 180 days old.

CONCLUSION & RELIEF REQUESTED

While Plaintiff presents a unique factual scenario unlikely to ever be presented again to this court, there are several important questions of fundamental constitutional law that are of first impression to this Court and that are capable of repetition yet evading judicial review. The case affects the fundamental constitutional rights of all 10 million-plus Michigan voters or potential voters. Plaintiff is clearly entitled to relief at the very minimum of four immediate rulings. First for a writ of mandamus to the BOE and BOC to proceed with canvassing and qualification of the initiative; Second, a declaratory ruling that the 1986 policy of the Bureau of Elections does not apply to the rebuttable presumption under MCL 168.472a; Third, a declaratory ruling that the rebuttable presumption of MCL 168.472a is unconstitutional; and Fourth that SB776 is inapplicable as a matter of law to Plaintiff and cannot be retroactively applied.

Plaintiff has both the facts and the law on its side, as well as the history and custom of petitioning in Michigan since 1908 and clear rights under Art 2 Sec 9 of the 1963 Michigan Constitution and under Michigan and federal court precedent, to have every signature it has submitted canvassed under the equal protection and due process of the law, with the opportunity, if the rebuttable presumption is found to be constitutional, for Plaintiff to rebut any presumption of staleness that the Bureau presents to it as part of its sample or canvass of Plaintiff's petitions. In light of the seriousness of this potentially being an election matter in less than five months (Plaintiff does not waive any right to be placed on the ballot at any next regular election in Michigan if Plaintiff is deprived by any means of resolving legal issues of ballot qualification prior to the November 8, 2016 election—in other words Plaintiff seeks remedy to be placed on the ballot, which is not exclusive to the elections of 2016, 2018, 2020, etc.), the Court must act expeditiously to do justice.

WHEREFORE, Plaintiff seeks remedy and redress from the Court to issue a writ of mandamus for the reasons set forth above and in Plaintiff's brief in support, and that an order to show cause be issued, and for other relief:

- Expedite this matter on the Court's docket;
- Declare the 1986 rebuttable presumption policy of the Board of Canvassers as unconstitutional under article 2 section 9, and unenforceable as applied to statutory initiatives;
- Declare the 1986 rebuttable presumption policy of the Board of Canvassers as unconstitutional as a violation of the First Amendment, and unenforceable as applied to statutory initiatives;

- Declare the 1986 rebuttable presumption policy of the Board of Canvassers as unconstitutional as a violation of the 5th and 14th Amendments, and unenforceable as applied to statutory initiatives;
- Declare the enforcement of the rebuttable presumption of MCL 168.472a as unconstitutional under article 2 section 9, and unenforceable as applied to statutory initiatives;
- Declare the enforcement of the rebuttable presumption of MCL 168.472a as unconstitutional as a violation of the First Amendment;
- Declare the enforcement of the rebuttable presumption of MCL 168.472a as unconstitutional as a violation of the 5th and 14th Amendments;
- Issue a Temporary Restraining Order and enjoin Defendants from enforcement of the rebuttable presumption of MCL 168.472a; the 1986 Board of Canvassers rebuttable presumption policy; and from enforcing SB776, or any other statute or administrative rule which restricts the length of the signature collection period for statutory initiatives;
- Issue a Writ of Mandamus to the Bureau of Elections and Board of Canvassers with an Order to proceed with any canvassing and qualifications of the petitions in a normal, orderly, timely, and constitutionally compliant fashion;
- Declare all other legislative or administrative restrictions of the length of the signature collection period unconstitutional under article 2 section 9, and unenforceable as applied to statutory initiatives;
- Declare SB776 unconstitutional under article 2 section 9, and unenforceable as applied to statutory initiatives;

- Declare SB776 unconstitutional as a violation of the First Amendment;
- Declare SB776 unconstitutional as a violation of the 14th Amendment.
- Enjoin defendants from applying SB776, or any other statute or administrative rule which restricts the length of the signature collection period for statutory initiatives;
- Award Plaintiff at least $690,000.00 in damages for actual costs of signatures Plaintiff has been unjustly deprived of if any of Plaintiff's submitted signatures are not fully canvassed; or $1.1 million dollars if all of Plaintiff's submitted signatures are not fully canvassed.
- Award Plaintiff costs and punitive damages for the egregious nature of Defendants actions and due to the important public interests at stake which Plaintiff's actions are protecting and advancing;
- Award Plaintiff's counsel reasonable attorney fees; and
- Grant such other relief as the court finds just or equitable under the circumstances.

Respectfully Submitted:
HANK LAW, PLLC

Dated: _____ By: _____

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TABLE OF EXHIBITS

A. MILegalize Petition
B. Filing Statement 354,000 Signatures
C. BOE staff recommendation to deny for insufficient signatures
D. Rebuttals that Plaintiff can already offer proofs for
E. 1986 BOC Policy Meeting Minutes
F. AG 4813
G. AG 5528
H. 1986 Comments from 1986 BOC meeting where policy adopted
I. 2016 Communications from clerks regarding refusing or not rebutting signatures under the 1986 BOC Policy
J. 2015-2016 Comments on Proposed Revisions to BOC Rebuttable Presumption policy
K. BOE Policy Proposals
L. Board of Canvassers Meeting December 3, 2015 Transcript
M. Board of Canvassers Meeting December 14, 2015 Transcript
N. Board of Canvassers Meeting December Transcript
O. Board of Canvassers Meeting January 14, 2016 Transcript
P. Board of Canvassers Meeting March 7, 2016 Transcript
Q. Board of Canvassers Meeting March 24, 2016 Transcript
R. Board of Canvassers Meeting May 12, 2016 Transcript
S. Gary Gordon State Bar Journal Article
T. Pleadings for *Consumers Power*
U. Affidavit of Christopher J. Silva
V. Affidavit of Nicholas Zettell