

Chad Baase

(517)879-8176

RecallDananessel@gmail.com

Board of State Canvassers

Attn: Michigan Bureau of Elections

Michigan Department of State

Richard H. Austin Building

430 West Allegan St., 1st Floor

Lansing, MI 48918

Re; Acceptance of Petition Seeking Recall of Attorney General Dana Nessel

Dear Board Members:

I am respectfully requesting on behalf of the people of the State of Michigan, and myself, Chad Everett Baase, that you review the enclosed hyperlinks to news articles that support each claim as clear and factual.

<https://www.bridgemi.com/michigan-government/dana-nessels-office-drops-charges-flint-water-contamination-case>

<https://wdet.org/posts/2019/06/14/88309-michigan-attorney-general-dana-nessel-explains-dropping-charges-in-flint-water-crisis-case/>

<https://www.google.com/search?q=dana+nessel+flint+water+crisis&og=dana+nessel+flint&aqs=chrome..69i57j0l2.18421j0j4&sourceid=chrome&ie=UTF-8>

Whereas we have provided Clear and factual documentation to support each claim We the People ask that you accept the language as written as clear and factual.

Respectfully Submitted,

Chad Everett Baase



Dykema Gossett PLLC
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933

WWW.DYKEMA.COM

Tel: (517) 374-9100

Fax: (517) 374-9191

Steven C. Liedel

Direct Dial: (517) 374-9184

Direct Fax: (855) 259-3571

Email: SLiedel@dykema.com

May 21, 2020

Via Email
malermanm@michigan.gov

Board of State Canvassers
Attn: Bureau of Elections
Michigan Department of State
Richard H. Austin Building
430 West Allegan Street, 1st Floor
Lansing, Michigan 48918

Re: Rejection of Petition Seeking Recall of Attorney General Nessel

Dear Board Members:

On behalf of Attorney General Nessel and the Friends of Dana Nessel, we ask the Board of State Canvassers (the “**Board**”) to reject as non-compliant with the Michigan Election Law the proposed petition seeking to recall Attorney General Nessel from the office of attorney general submitted by Mr. Chad Baase on May 12, 2020 (the “**Petition**”). We are in receipt of the May 15, 2020 notice from the Director of Elections notifying the Attorney General of the Petition (the “**Notice**”). The Notice indicates that the reasons for recall stated in the heading of the Petition are:

In June 2019, Attorney General Dana Nessel permitted her prosecution [*sic*] team to dismiss criminal charges against 8 remaining defendants charged related to the Flint water crisis. Attorney [*sic*] General Dana Nessel has failed to bring new charges against anyone responsible for the thousands of children who were exposed to lead from drinking water or the 12 people who died of Legionnaires [*sic*] Disease in connection with the Flint water crisis and no defendants have been sentenced to prison time for these injuries and deaths.

Under section 951a of the Michigan Election Law¹, a petition for the recall of a state officer must state factually and clearly each reason for the recall. Each reason must be based upon the officer’s conduct during his or her term of office.

The Petition states two distinct reasons for recall:

¹ MCL 168.951a (copy attached as exhibit 1).

- (1) “In June 2019, Attorney General Dana Nessel permitted her prosecution [*sic*] team to dismiss criminal charges against 8 remaining defendants charged related to the Flint water crisis.”; and
- (2) “Attorney [*sic*] General Dana Nessel has failed to bring new charges against anyone responsible for the thousands of children who were exposed to lead from drinking water or the 12 people who died of Legionnaires [*sic*] Disease in connection with the Flint water crisis and no defendants have been sentenced to prison time for these injuries and deaths.”

With the Petition before you, the Board now has a statutory duty to determine by an affirmative vote of at least three Board members whether each reason for the recall stated in the Petition is both (1) factual and (2) of sufficient clarity to enable Attorney General Nessel and the electors to identify the course of conduct that is the basis for the recall². If any reason for the recall is not factual or of sufficient clarity, the Board must reject the entire Petition³.

The reasons for recall included in the Petition are not factual or of sufficient clarity to enable Attorney General Nessel and Michigan electors to identify the course of conduct by Attorney General Nessel that is the basis for the recall:

First Stated Reason for Recall Not Factual, Not of Sufficient Clarity, and Not Based on Conduct of Attorney General Nessel

*“In June 2019, Attorney General Dana Nessel permitted her prosecution [*sic*] team to dismiss criminal charges against 8 remaining defendants charged related to the Flint water crisis.”*

Not Factual

The first stated reason, indicating that Attorney General Nessel permitted her “prosecution [*sic*] team” to dismiss criminal charges relating to the “Flint water crisis” is not factual for two reasons:

- (1) Attorney General Nessel does not have a “prosecution team”.
- (2) Attorney General Nessel did not permit any team, “prosecution” or otherwise, to dismiss criminal charges relating to the “Flint water crisis”. Instead, due to a conflict wall⁴ established within the Department of Attorney General, all decisions

² MCL 168.951a(3).

³ *Id.*

⁴ See exhibit 2 for Fourth Amended Notice of Conflict Wall (Flint Water Prosecutions) dated February 14, 2019.

made in June 2019 relating to criminal charges, the City of Flint, and its water system were made independently by the solicitor general⁵, without permission by Attorney General Nessel, and not by Attorney General Nessel.

Not Sufficiently Clear

The first stated reason for recall is not of sufficient clarity for three reasons:

- (1) The word “prossecution” as used in the Petition is generally unknown, not defined in dictionaries of the English Language⁶, and likely to confuse or mislead electors unfamiliar with the undefined word.
- (2) The references to “criminal charges” and “defendants charged” are vague. Without further specificity regarding the crimes, the charges, the cases, and the defendants, electors are inhibited from identifying the course of conduct of the Attorney General that is the basis for the recall.
- (3) The use of the phrase “Flint water crisis” is ambiguous because it does not indicate where the crisis occurred (City of Flint? Flint Township? the Flint family?), does not indicate the nature of the water crisis, and does not indicate when the crisis occurred, making it difficult for any electors to ascertain how the “crisis” related to conduct by Attorney General Nessel.

Not Based on Conduct of Attorney General Nessel

The first stated reason for recall included in the Petition is not based upon the conduct of Attorney General Nessel during her term of office as required by the Michigan Election Law. It is instead based on the conduct of the solicitor general, who made all decisions in June 2019 relating to criminal charges, the City of Flint, and its water system independently and without permission from Attorney General Nessel.

Because the first reason for recall included in the Petition is (1) not factual, (2) not of sufficient clarity to enable Attorney General Nessel and the electors to identify the course of conduct that is the basis for the recall, and (3) describes conduct by a state officer other than Attorney General Nessel, we ask the Board to affirmatively reject the first reason for recall stated in the Petition and the Petition in its entirety.

⁵ MCL 14.28 requires the attorney general to designate an assistant attorney general as the “solicitor general”.

⁶ See <https://www.dictionary.com/misspelling?term=prossecution> [visited May 20, 2020].

Second Stated Reason for Recall Not Factual, Not of Sufficient Clarity, and Not Based on Conduct of Attorney General Nessel

“Attorney [sic] General Dana Nessel has failed to bring new charges against anyone responsible for the thousands of children who were exposed to lead from drinking water or the 12 people who died of Legionnaires [sic] Disease in connection with the Flint water crisis and no defendants have been sentenced to prison time for these injuries and deaths.”

Not Factual

The second stated reason for recall indicating that “Attorney [sic] General” Nessel failed to bring new charges” is not factual because Dana Nessel is the Attorney General of the State of Michigan, not the “Attorney [sic] General” of the State of Michigan. There is no state office of “Attorney [sic] General” in Michigan. The Michigan Constitution provides for an “attorney general”⁷, a state office currently held by Dana Nessel.

Additionally, while certain charges against criminal defendants were dismissed without prejudice on June 13, 2019, the criminal investigation led by the solicitor general and the Wayne County prosecutor relating to the City of Flint and that city’s water system was expanded based on new evidence on that same day.⁸ The criminal investigation continues and the solicitor general and the Wayne County prosecutor have indicated that they are committed to a complete investigation using all investigative means at their disposal.⁹ The investigation may result in criminal charges being filed in the future.

Not Sufficiently Clear

The second reason for recall included in the Petition is not of sufficient clarity to satisfy the requirements of the Michigan Election Law for four reasons:

⁷ See Const 1963, art 5, § 3.

⁸ See https://www.michigan.gov/ag/0,4534,7-359-92297_47203-499753--,00.html [visited May 20, 2020] (“Flint Water Prosecution Team Expands Investigation Based on New Evidence, Dismisses Cases Brought by Former Special Counsel”).

⁹ See https://www.michigan.gov/ag/0,4534,7-359-92297_47203-526169--,00.html [visited May 20, 2020] (“Flint Water Prosecution Remains on Track as Anniversary of Water Switch Approaches”).

- (1) The word “Attorney” as used in the Petition is generally unknown, not defined in dictionaries of the English Language¹⁰, and likely to confuse or mislead electors unfamiliar with the undefined word.
- (2) The phrase “Legionnaires Disease” as used in the Petition is generally not a recognized disease, unlike the phrase “Legionnaires’ Disease”¹¹, which is a disease recognized by the Centers for Disease Control Prevention and a phrase recognized in English language dictionaries¹². Use of the phrase “Legionnaires Disease” could confuse or mislead electors unfamiliar with the undefined phrase.
- (3) It is not clear what injuries are referenced in the second reason for recall when the phrase “these injuries” is used. Prior to the use of the phrase “these injuries”, exposure to Lead is referenced and 12 deaths are referenced, but there are no injuries specified in the second reason for recall, preventing an elector from making any connection between conduct of Attorney General Nessel and any injuries.
- (4) The use of the phrase “Flint water crisis” is ambiguous, because it does not indicate where the crisis occurred (City of Flint? Flint Township? the Flint family?), does not indicate the nature of the water crisis, and does not indicate when the crisis occurred.

Not Based on Conduct of Attorney General Nessel During Her Current Term of Office

The second stated reason for recall included in the Petition is not based upon the conduct of Attorney General Nessel during her current term of office as required by the Michigan Election Law for three reasons:

- (1) Exposure of residents of the City of Flint to lead in city drinking water occurred in 2014 to 2015¹³, but Dana Nessel did not begin her initial term as Attorney General until later, on January 1, 2019.
- (2) An outbreak of Legionnaires’ Disease apparently due to low chlorine levels in the city water system is believed to resulted in the deaths of 12 people in the City of

¹⁰ See <https://www.dictionary.com/misspelling?term=Attorney> [visited May 20, 2020].

¹¹ See <https://www.cdc.gov/legionella/index.html> [visited May 20, 2020] (“Legionnaires’ (LEE-juh-nares) disease is a serious type of pneumonia (lung infection) caused by Legionella (LEE-juh-nell-a) bacteria.”).

¹² See <https://www.dictionary.com/browse/legionnaires--disease> [visited May 20, 2020]

¹³ <https://www.cdc.gov/nceh/lead/programs/flint-registry.htm> [visited May 20, 2020].

Flint in 2014 and 2015¹⁴, but Dana Nessel did not begin her initial term as Attorney General until later, on January 1, 2019.

- (3) The indication that “no defendants have been sentenced to prison time” cannot be a reference to conduct of Attorney General Nessel. The judiciary sentences defendants to prison time, not the Attorney General. The course of conduct described can’t therefore be the basis for the recall of Attorney General Nessel.


Because the second reason for recall included in the Petition is (1) not factual, (2) not of sufficient clarity to enable Attorney General Nessel and the electors to identify the course of conduct that is the basis for the recall, and (3) describes conduct by a officers other than Attorney General Nessel during her current term of office, we ask the Board to affirmatively reject the second reason for recall stated in the Petition and the Petition in its entirety.

In summary, the Petition includes two stated reasons for recall. Neither of the two are factual as the Michigan Election Law mandates. Neither is of sufficient clarity to enable Attorney General Nessel and the electors to identify the course of conduct that is the basis for the recall as the Michigan Election Law requires. For these reasons, the entire Petition must be rejected.

I plan to appear at the clarity hearing on Friday, May 22, 2020 at 2:00 p.m. and look forward to addressing the Board. Thank you in advance for your attention to this matter.

Sincerely,

DYKEMA GOSSETT, PLLC



Steven C. Liedel

cc: Attorney General Dana Nessel
Jonathan Brater

118950.000001 4834-0166-8285.2

¹⁴ <https://www.npr.org/sections/health-shots/2018/02/05/582482024/lethal-pneumonia-outbreak-caused-by-low-chlorine-in-flint-water> [visited May 20, 2020] (“Lethal Pneumonia Outbreak Caused By Low Chlorine In Flint Water”)].

Exhibit 1

MICHIGAN ELECTION LAW (EXCERPT) Act 116 of 1954

168.951a Recall petition under MCL 168.959; requirements; submission to board of state canvassers; determination that reason for recall is factual and of sufficient clarity; notice; meeting; presentation of arguments; appeal; validity of petition.

Sec. 951a. (1) A petition for the recall of an officer listed in section 959 must meet all of the following requirements:

(a) Comply with section 544c(1) and (2).

(b) Be printed.

(c) State factually and clearly each reason for the recall. Each reason for the recall must be based upon the officer's conduct during his or her current term of office. The reason for the recall may be typewritten. If any reason for the recall is based on the officer's conduct in connection with specific legislation, the reason for the recall must not misrepresent the content of the specific legislation.

(d) Contain a certificate of the circulator. The certificate of the circulator may be printed on the reverse side of the petition.

(e) Be in a form prescribed by the secretary of state.

(2) Before being circulated, a petition for the recall of an officer under subsection (1) must be submitted to the board of state canvassers.

(3) The board of state canvassers, not less than 10 days or more than 20 days after submission to it of a petition for the recall of an officer under subsection (1), shall meet and shall determine by an affirmative vote of 3 of the members serving on the board of state canvassers whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. If any reason for the recall is not factual or of sufficient clarity, the entire recall petition must be rejected. Failure of the board of state canvassers to meet as required by this subsection constitutes a determination that each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is being sought and the electors to identify the course of conduct that is the basis for the recall.

(4) The board of state canvassers, not later than 3 business days after receipt of a petition for the recall of an officer as provided under subsection (2), shall notify the officer whose recall is sought of each reason stated in the recall petition and of the date of the meeting of the board of state canvassers to consider whether each reason is factual and of sufficient clarity.

(5) The officer whose recall is sought and the sponsors of the recall petition may appear at the meeting and present arguments on whether each reason is factual and of sufficient clarity.

(6) The determination by the board of state canvassers may be appealed by the officer whose recall is sought or by the sponsors of the recall petition drive to the court of appeals. The appeal must be filed not more than 10 days after the determination of the board of state canvassers. If a determination of the board of state canvassers is appealed to the court of appeals, the recall petition is not valid for circulation and must not be circulated until a determination of whether each reason is factual and of sufficient clarity is made by the court of appeals or until 40 days after the date of the appeal, whichever is sooner.

(7) A petition is not valid for circulation if at any time the court of appeals determines that each reason on the recall petition is not factual and of sufficient clarity.

(8) A recall petition is valid for 180 days after either of the following, whichever occurs later:

(a) The date of determination of whether each reason is factual and of sufficient clarity by the board of state canvassers.

(b) The sooner of the following:

(i) The date of determination of whether each reason is factual and of sufficient clarity by the court of appeals.

(ii) Subject to subsection (7), 40 days after the date of the appeal under subsection (6).

(9) A recall petition that is filed after the 180-day period described in subsection (8) is not valid and must not be accepted by the filing official under section 961. This subsection does not prohibit a person from resubmitting a recall petition for a determination of sufficient clarity and factualness under this section.

History: Add. 2012, Act 417, Imd. Eff. Dec. 20, 2012;—Am. 2018, Act 190, Imd. Eff. June 20, 2018.

Compiler's note: Enacting section 2 of Act 417 of 2012 provides:

"Enacting section 2. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

Enacting section 3 of Act 417 of 2012 provides:

"Enacting section 3. The legislature recognizes the importance of the electoral process, and it is the intent of the legislature that this amendatory act uphold each of the following:

- (a) Section 4 of article II of the state constitution of 1963.
- (b) Section 8 of article II of the state constitution of 1963.
- (c) Section 26 of article V of the state constitution of 1963."

Popular name: Election Code

Exhibit 2

Liedel, Steven

From: MIAG-FYI <MIAG-FYI@michigan.gov>
Sent: Thursday, February 14, 2019 11:41 AM
To: AG-ALL_Staff
Subject: SPECIAL FYI (CONFLICT WALL NOTICE)

Importance: High

FOURTH AMENDED NOTICE OF CONFLICT WALL (Flint Water Prosecutions)

This is to notify all staff that, pursuant to the Michigan Rules of Professional Conduct, the Department of Attorney General has established a conflict wall between (1) Attorney General Dana Nessel and the Department of Attorney General staff hired before December 30, 2018 and (2) Criminal Division attorneys hired on or after December 30, 2018, along with recently appointed Solicitor General Fadwa Hammoud and Assistant Attorney General Daniel Ping, concerning the prosecution of individuals related to Flint water, currently handled by SAAG Todd Flood PC.

**Attorney General Dana Nessel and Solicitor General
Department of Attorney General Staff Fadwa Hammoud
hired before December 30, 2018**

Daniel Ping

Criminal Division attorneys

2018

All matters related to Flint water prosecutions shall be marked with a copy of this Conflict Wall notice. Related file cabinets shall also be marked with this conflict wall notice.

DEPARTMENT EMPLOYEES SHALL:

- 1. Recognize that Attorney General Dana Nessel and Department staff hired before December 30, 2018 are prohibited from engaging in any discussions concerning Flint water criminal matters, with Solicitor General Hammoud, Daniel Ping or Criminal Division attorneys hired on or after December 30, 2018, unless consistent with the Rules of Professional Conduct.**

Prevent all other department staff from viewing Solicitor General files, documents, or material relating to Flint criminal matters.

Refuse to receive any confidential information from the Solicitor General or conflicted Criminal Division staff concerning the Flint water prosecutions.

For questions or other concerns regarding this conflict wall, contact Ethics Office Frank J. Monticello at (517) 927-0910 or Heather Meingast at (517) 335-7661.