



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

MEMORANDUM

DATE: April 25, 2012
TO: Members of the Board of State Canvassers
FROM: Christopher M. Thomas, Secretary of the Board of State Canvassers
SUBJECT: Citizens for Fiscal Responsibility's Challenge to the Referendum Petition filed by Stand Up for Democracy

On April 9, 2012, the ballot question committee Citizens for Fiscal Responsibility (CFR) submitted a challenge to the form of the referendum petition filed by Stand Up for Democracy, which seeks to invoke the right of referendum on Public Act 4 of 2011, popularly known as the emergency financial manager law. This memorandum concerns CFR's challenge to the type size of the petition heading.

CFR asserts that the type size of the petition heading,

**REFERENDUM OF LEGISLATION
PROPOSED BY INITIATIVE PETITION**

does not comply with the requirement of MCL 168.482(1) that it be "printed in capital letters in 14-point boldfaced type [.]"

The Board is faced with competing claims from Stand Up for Democracy and CFR regarding whether the type size used complies with MCL 168.482(1). CFR asserts that the type size "is in a substantially smaller font than required by law." Challenge, p. 11. Stand Up for Democracy counters that "[t]he heading is in fourteen point, boldface type as sworn to in the printer's affidavit submitted to the Board." Response, p. 4. Both parties have filed affidavits in support of their respective positions.

By law, the Board is authorized "to make a determination with regard to the 'sufficiency or insufficiency of a petition under this chapter,' including a determination of the 'sufficiency' of the petition's compliance with MCL 168.482." *Michigan Campaign for New Drug Policies v Bd of State Canvassers* (Dkt No. 243506). CFR's challenge to the type size of the heading necessarily involves a determination of whether the form of the petition complies with the technical requirements of MCL 168.482(1).

Section 544d of the Michigan Election Law, MCL 168.544d, authorizes the circulation of referendum petitions printed on a countywide form prescribed by the Secretary of State, "which form shall be substantially as provided in section[] 482 ..." The courts have held that when canvassing an initiative petition,

The Board's authority and duties with regard to proposed constitutional amendments are limited to determining whether the form of the petition *substantially complies* with the statutory requirements and whether there are sufficient signatures to warrant certification of the proposal.

Citizens for the Protection of Marriage v Bd of State Canvassers, 263 Mich. App. 487, 492-493 (2004) (emphasis added). The principle of substantial compliance is well established and was also applied in an earlier case, *Coalition to Defend Affirmative Action & Integration v Bd of State Canvassers*, 262 Mich App 395, 405-406 (2004):

We find that the petition substantially complied with these instructions. It is well established by both statute and case law that petitions need only substantially conform to the statutory requirements. MCL 168.544d (petitions shall be on forms that are “substantially as provided in sections 482 . . .”); see also *Charter Twp of Bloomfield v Oakland Co Clerk*, 253 Mich App 1, 22-23; 654 NW2d 610 (2002). In *Newsome v Bd of State Canvassers*, 69 Mich App 725, 729; 245 NW2d 374 (1976), this Court held that “constitutional and statutory initiative and referendum provisions should be liberally construed to effectuate their purposes, to facilitate rather than hamper the exercise by the people of these reserved rights.” *Id.*, citing *Kuhn v Department of Treasury*, 384 Mich 378; 183 NW2d 796 (1971). In *Settles v Detroit City Clerk*, 169 Mich App 797, 802-803; 427 NW2d 188 (1988), this Court reaffirmed the general rule that “all doubts as to technical deficiencies or failure to comply with the exact letter of procedural requirements in petitions . . . are resolved in favor of permitting the people to vote and express a choice on any proposal subject to election.”

Stand Up for Democracy also cites *Charter Township of Bloomfield v Oakland Co Clerk*, 253 Mich App 1 (2002), in which an annexation petition containing numerous defects – including a warning statement that was not printed in 12-point boldface type as required by law – substantially complied with the technical requirements of the Michigan Election Law. With respect to the deficient type size, the Court of Appeals observed:

We lastly note that to the extent the warning portions of the petitions did not appear in bold print, the warnings did appear entirely in capital letters that clearly set the warnings apart from the remainder of the petitions . . . In light of these facts, we find that the petitions were ‘in sufficiently clear terms so that those signing the petition can be assumed to have understood to what it was they were appending their signatures.’

* * *

We conclude that the circuit court properly found substantial compliance by the annexation petitions, and correctly refused to permit the minor defects alleged by the township to preclude the September 11, 2001, annexation election.

Id. at 24-25 (internal citations omitted).

Research reveals the existence of one arguably contrary case involving the qualification of a new political party, which holds that the petition sponsor's “failure to *strictly comply* with the requirements of MCL 168.685(4) [.]” regarding technical formatting requirements applicable to

new political party petitions rendered the petition defective. *The Tea Party v Bd of State Canvassers*, (Dkt No. 299805) (emphasis added). Although section 685(4) requires that “the name of the proposed political party shall be in 24-point boldface type [,]” the first word of the party’s name (“The”) was printed in only 8-point type. *The Tea Party* case, however, is distinguishable in that it refers to the petition standards prescribed under MCL 168.685 that are uniquely applicable to new political party petitions, and as an unpublished order of the Court of Appeals, the case is not binding on other parties or panels of the Court of Appeals.

In sum, the applicable legal standard by which this petition should be measured is one of substantial compliance: Does the font size of the petition heading substantially comply with the requirement that it be, “printed in capital letters in 14-point boldfaced type [,]” in accordance with section 482(1) of the Michigan Election Law?