



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

August 13, 2012

**STAFF REVIEW
 OF "CITIZENS FOR MORE MICHIGAN JOBS"
 PETITION**

SPONSOR: Citizens for More Michigan Jobs, P.O. Box 13187 Lansing, MI 48901

DATE OF FILING: June 26, 2012, 9:23 a.m.

NUMBER OF VALID SIGNATURES REQUIRED: 322,609 signatures.

TOTAL FILING: Sponsor estimated 72,146 sheets containing an estimated 509,777 signatures.

SIGNATURE SAMPLE

NOT INCLUDED IN SAMPLE: 1,518 sheets containing 6,110 signatures. Petition sheets discounted for defective circulator certificates, defective petition headings, torn/mutilated/incomplete petition sheets and blank petition sheets.

INCLUDED IN SAMPLE: 70,540 sheets containing 504,026 signatures.

NUMBER OF SAMPLED SIGNATURES: 679 signatures.

SAMPLE RESULT: 539 valid signatures; 140 invalid signatures.

Valid signatures

Registered signers; signatures verified: 539

Invalid signatures

Facially defective signatures: 21

Signatures determined invalid due to signer's registration status: 119

Total 679

RESULT OF SIGNATURE SAMPLE

ESTIMATED NUMBER OF VALID SIGNATURES CONTAINED ON PETITION:

400,103 signatures.

STAFF FINDING: The petition contains a sufficient number of valid signatures.

CHALLENGE

A challenge was timely filed on behalf of Protect MI Constitution (PMC) by John Pirich and Peter Ellsworth on August 8, 2012. In particular, the challenge raises three issues: (1) whether the proposal “alters or abrogates” sections of the Constitution not identified on the petition in violation of Const. Art. XII, §2 and MCL 168.482(3); (2) whether the summary of the petition is incomplete and misleading such that it cannot be placed before voters; and (3) whether MCL 168.482(3) requires the petition sponsor to include the full text of the purported amendments to the Michigan Gaming Control and Revenue Act (Gaming Act), 1996 Initiated Law 1, MCL 432.201 *et seq.*

A preliminary response to the challenge was filed by the petition sponsor, Citizens for More Michigan Jobs (CFMMJ) on August 10, 2012, prior to the release of this staff report. CFMMJ argues that the Board is not authorized to entertain “challenges that relate to the substance or subject matter of the proposal, and may not consider the merits of the proposal, or its lawfulness, which matters are not ripe for review until after, and in the event of, enactment by the voters.” CFMMJ Preliminary Response, p. 2.

PMC’s challenge is limited to the form of the petition and does not dispute that the petition contains a sufficient number of valid signatures. This petition was approved as to form by the Board at its April 3, 2012 meeting. CFMMJ emphasizes that the Board’s motion granting approval as to form explicitly disclaims any duty to consider “the substance of the proposal which appears on the petition; the substance of the summary of the proposal which appears on the signature side of the petition; or the manner in which the proposal language is affixed to the petition.”

1. Altered or Abrogated:

PMC asserts that the form of the CFMMJ petition suffers from a fatal defect because the petition’s sponsors omitted all of the provisions of the Constitution that the proposal alters or abrogates. In particular, PMC points to the omission of Const. Art. IV, §40, which provides: “[T]he legislature may by law establish a liquor control commission which, subject to statutory construction, shall exercise complete control of the alcoholic beverage traffic within this state including retail sales thereof.” The CFMMJ proposal, if adopted, would amend Const. Art. IV, §41 to provide: “All casinos authorized by this section shall be granted liquor licenses issued by the State of Michigan to serve alcoholic beverages on the premises.”

The Michigan Supreme Court has held that the legal test to be applied is whether the proposed constitutional amendment would “add to, delete from, or change the existing wording of the provision, or would render it wholly inoperative.” *Ferency v Secretary of State*, 409 Mich 569, 597 (1980); see also *Massey v Secretary of State*, 457 Mich 410 (1998).

In its preliminary response to the challenge, CFMMJ disputes PMC’s contention the petition adds or deletes language from Art. IV, §40 or that it renders that provision wholly inoperative. Instead CFMMJ argues that if its proposal is adopted, Art. IV, §40 regarding the powers of the Liquor Control Commission may have to be harmonized with amended Art. IV, §41. CFMMJ also relies on *School District of Pontiac v City of Pontiac*, 262 Mich 338, 344 (1933), which holds:

But the ordinary elector, not being a constitutional lawyer, would be confused rather than helped by a publication of all the other constitutional provisions which were or might be directly or only remotely, and possibly only contingently, affected by the proposed amendment. ... [O]ther provisions which are still operative, though possibly they may need thereafter to be construed in conjunction with the amending provision, need not necessarily be published.

CFMMJ further states that its petition is compliant with the requirement to republish provisions of the Constitution that are altered or abrogated by its proposal; namely, Art. IV, §41.

2. Summary:

PMC urges the Board to declare the petition insufficient on the grounds that the summary that appears on the signature side of the petition is incomplete and misleading. PMC’s argument is based on its view that the summary must apprise petition signers that the CFMMJ petition amends the voter-initiated Gaming Act. As support for this proposition, PMC cites the Secretary of State’s prescribed format of initiative and referendum petitions for *legislative proposals*, not constitutional amendments, which requires the sponsor to “specif[y] the title and the provision or provisions of Michigan law which the proposal is designed to alter, eliminate or create.” PMC Challenge, p. 16; Secretary of State prescribed format (attached to the challenge as Exhibit 6), p. 2. According to PMC, the omission of any reference to the Gaming Act in the summary constitutes a fatal defect.

CFMMJ denies that its proposed constitutional amendment amends the Gaming Act, and argues that PMC errs to the extent that it claims that the sponsor of a constitutional amendment petition is required include in its summary a reference to a state statute that could be affected by the proposal.

3. Full Text of Statutory Provisions Affected by Proposed Constitutional Amendment:

Lastly, PMC posits that the Board may declare the CFMMJ petition insufficient for its failure to include the full text of the statutory provisions of the Gaming Act that are purportedly affected by this proposed constitutional amendment. As authority for its argument, PMC

again cites the Secretary of State’s prescribed format of initiative petitions for legislative proposals, PMC Challenge, pp. 17-18; Secretary of State prescribed format, p. 2.

In view of CFMMJ’s denial that its proposed constitutional amendment constitutes an amendment to the Gaming Act, CFMMJ rejects the contention that it is required to republish a state statute that may potentially be affected by the proposal.

PMC has filed a related action against the Secretary of State (see “Pending Litigation” below) but emphasizes that the challenge it presents to the Board does not implicate the its legal claim that the Secretary of State has a duty to make a threshold determination of whether the petition is eligible to appear on the ballot. CFMMJ asserts that by virtue of filing suit against the Secretary of State, PMC concedes that the Board is not authorized to reject the petition.

STAFF FINDING: The staff expresses no opinion with regard to the first challenge, abrogation.

With regard to the second and third challenges to the summary and inclusion of the text of laws affected, the staff recommends that the Board reject these challenges to the extent that PMC relies on the Secretary of State’s prescribed format of petitions for *legislative proposals* as the basis for the challenges. The Secretary of State’s prescribed format is silent on citing affected statutes in a petition to amend the Constitution, but the prescribed format of a petition to initiate legislation does require that affected laws be referenced and republished. PMC does not claim that this is a petition to initiate legislation.

PENDING LITIGATION

Litigation regarding this petition is currently pending before the Court of Appeals in the case of *Protect MI Constitution v Secretary of State*, Dkt. No. 311504. The Board of State Canvassers was not named as a party. The plaintiff seeks a writ on mandamus to compel the Secretary of State to reject this petition and take no further action with respect to placing it on the ballot because the petition illegally combines a constitutional amendment with an amendment to the voter-approved Gaming Act. According to plaintiff, the Secretary of State has a duty to address the threshold ballot eligibility arguments it raises and reject the petition on constitutional grounds.

In response, the Secretary of State argues that she does not possess the authority to undertake a substantive review of this proposal and render a decision on whether it passes constitutional muster. Under the Election Law, the Secretary’s statutory duties are ministerial and limited to notifying the Board that an initiative or referendum petition has been filed, MCL 168.475(1), and transmitting the ballot language approved by the Board to the news media and local election officials, MCL 168.477(2), 168.480.

At oral argument, the parties agreed that the question of whether a proposal that purportedly conflates a constitutional amendment and a revision of an initiated law is eligible to appear on the ballot was an issue of first impression. The Court of Appeals heard oral arguments on August 6, 2012. As of this writing, a decision has not been issued in this case.