



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

December 15, 2015

**Solicitation For Comments Regarding A Proposed Change In Board Policy In Relation To The Method For Rebutting The Statutory Presumption That A Signature On A Constitutional Amendment Or Initiative Petition Is Stale And Void If Made More Than 180 Days Before The Petition Was Filed**

The Board of State Canvassers has received a request to reconsider its policy regarding the method for rebutting the statutory presumption that a signature affixed to a petition that proposes an amendment to the constitution or initiated law is stale and void if made more than 180 days prior to the date of filing. A copy of the request is attached to this announcement as Exhibit 1.

Under section 472a of the Michigan Election Law (MEL), MCL 168.472a, “[i]t 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.”

In 1986, the Board adopted the following procedure for rebutting this statutory presumption:

[T]he proponent of an initiative petition could rebut the presumption posed by MCL 168.472a by:

- (1) Proving that the person who executed the signature was properly registered to vote at the time the signature was executed and
- (2) Proving with an affidavit or certificate of the signer or appropriate clerk 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.

Minutes of the August 8, 1986 meeting of the Board of State Canvassers (attached as Exhibit 2). A draft revised policy was presented to the Board for discussion purposes only at its December 14, 2015 meeting (attached as Exhibit 3).

The Board of State Canvassers wishes to solicit written comments and/or oral testimony from interested parties regarding this issue for consideration at a future meeting. **Individuals and organizations are invited to submit written comments on or before January 8, 2016;** materials may be emailed to [elections@michigan.gov](mailto:elections@michigan.gov), or mailed or hand delivered to the address below. Interested parties may also provide testimony at an upcoming Board meeting (on a date yet to be determined).

# **EXHIBIT 1**

**HANK LAW, PLLC**  
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CONTACT@HANKLEGAL.COM

November 30, 2015

**Director Christopher Thomas**  
**Board of Canvassers**  
**Bureau of Elections**

*VIA EMAIL*

**RE: REQUEST FOR UPDATED POLICY ON REBUTTABLE PRESUMPTION  
OF SIGNATURES MORE THAN 180 DAYS OLD FOR INITIATIVE AND  
CONSTITUTIONAL AMENDMENT PETITIONS**

To Whom It May Concern:

Please accept this letter as a formal request for the Bureau of Elections and/or Board of Canvassers to update its 1986 policy regarding rehabilitating signatures that are more than 180 days old for the purposes of an initiatory petition or constitutional amendment. We request this matter be addressed internally by the Bureau, and by the Board at its next meeting on Dec. 3<sup>rd</sup> or as soon as possible thereafter.

Michigan law provides for a rebuttable presumption that a signature more than 180 days old is presumed stale and void. This of course means that a signature more than 180 days old can be valid for the purposes of qualifying an initiatory petition:

**168.472a Presumption as to signature on petition.**

Sec. 472a. 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.

The policy adopted in 1986 for rebutting the stale and void presumption provides for a petition proponent to submit signatures beyond a 180 day period as valid if the proponent can provide information that the signer of a petition was registered to vote at the time of signing the petition, and within the 180 day period prior to filing with the Secretary of State. The 1986 policy is attached as **Exhibit A**. This option also somewhat vaguely provides that either the signer or a municipal clerk would provide an affidavit attesting that the signer was registered in both instances.

Obviously, things have changed dramatically since 1986. When this policy was adopted the Qualified Voter File (QVF) didn't exist in Michigan election law, and the use of computer technology was rudimentary compared to today's standards. Under current Michigan law, MCL 168.509 et seq. provides that a voter whose name is in the QVF is registered to vote. In essence, a QVF reference at both times should be all that is required to prove registration (i.e. a person is

a “qualified elector”) and rebut a presumption of staleness or invalidity. The QVF went into affect between 1997 and 1998 (after the 1986 Board policy), and has presumably become easier to manage as information technology evolves. These two sections of Michigan election law are pertinent:

**168.509m Purpose of MCL 168.509m to 168.509hh; definitions.**

Sec. 509m. (1) The purposes of this section and sections 509n to 509hh are all of the following:

(a) To establish a statewide qualified voter file that consists of all qualified electors who wish to be registered to vote in local, state, and federal elections.

...

**168.509o Qualified voter file; establishment and maintenance; persons considered registered voters; signed application.**

...

Sec. 509o(2) Notwithstanding any other provision of law to the contrary, beginning January 1, 1998, a person who appears to vote in an election and whose name appears in the qualified voter file for that city, township, village, or school district is considered a registered voter of that city, township, village, or school district under this act.

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The 1986 policy also requires that each individual signer must be proven with this individualized method, rather than using random sampling (of course the Bureau uses random sampling to check for validity before qualifying an initiative—and since the law is silent on this practice, it would not be unreasonable to use random sampling for determining signatures beyond 180 days and not require individualized analysis—the individual analysis is Board policy, not law). Today, the ability to validate each and every voter is simpler for campaigns with resources. With computer technology we are able to produce a detailed report using the QVF as the basis that a person was registered in both instances. Given that technology now makes this substantially easier, and by definition Michigan law states a person in the QVF is a registered voter and that the QVF will be used to determine if a person is registered, an update to this policy is prudent. Of further note is Michigan law’s mandate of the use of the QVF to determine validity:

**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. (emphasis added).

.....

The extraordinary burden of requiring affidavits from each signer doesn't make sense-- the logistical burden of locating potentially tens or hundreds of thousands of people to sign an affidavit—which may even require a notary, makes it wholly impracticable, if not impossible to achieve. The other option would be for municipal clerks to provide affidavits—however, this is also unduly burdensome if not impossible. What if a municipal clerk refuses to provide an affidavit? There is no legal mechanism providing a method to compel a clerk to comply.

Given that the letter and intent of the law and the purpose behind the policy was to assure that the signer was registered in both instances, the goals of the 1986 policy can now be achieved in a more practical manner, in a format that could be provided to the Bureau that is much easier to analyze for the purposes of determining registration. The Bureau's manual (**Exhibit B**) suggests contacting the Bureau to determine how to rehabilitate stale signatures. We believe there is an alternative that is much better for the public, the Bureau, and petitioners in general, and it's as simple as using the QVF.

I also happen to be the Executive Director of the Michigan Comprehensive Cannabis Law Reform Committee, a Ballot Question Committee that is in the midst of completing an initiatory petition with plans on submitting our petitions with a report logging each signer to the Bureau, with QVF references for the purposes of validity. If we choose to extend our campaign beyond 180 days and rebut the presumption on signatures, we request an updated policy and protocol for providing the Bureau with whatever requisite information is needed to satisfy the intent of MCL 168.472a, preferably, a QVF reference report and a single affidavit provided by the preparer of the report that both instances of registration exist for any particular signer based on the QVF at the time of signing and within the 180 days prior to submission to the Secretary of State.

The right to petition is one of five core guarantees of the First Amendment. It is well settled law that once a state provides for the initiative process, all laws, rules, regulations or policies must be consistent with a strict scrutiny analysis of the First Amendment. The initiative process is not guaranteed by the U.S. Constitution (*Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 295 (6th Cir.1993)), but once a state confers upon its citizens the opportunity to participate

in the initiative process, it may not limit that state-created right in contravention of federal fundamental law. *Meyer v. Grant*, 486 U.S. 414, 422-424, 108 S.Ct. 1886, 1892-93, 100 L.Ed.2d 425 (1988) (the right to circulate an initiative petition is "core political speech"). *Brock v Thompson*, 948 P2d 279, 287 fn 25; 1997 OK 127 (Okla 1997). Many other Supreme Court and 6<sup>th</sup> Circuit precedents have expanded upon this—including the recent 2014 Rep. John Conyers case in Michigan's Eastern District federal court where registration for circulators was declared unconstitutional.

Strict scrutiny requires that any policy be narrowly tailored using the least restrictive means to achieve a compelling governmental interest. Any policy therefore should be the least burdensome on any person's First Amendment rights, while at the same time upholding the governmental interest in purity of elections. In this instance, the intent of the law is to assure persons signing a petition are registered voters. The current policy of requiring numerous affidavits from parties that may be unwilling to comply or assist—or in the case of county clerks could even be hostile to the political cause of any given petition—is clearly not narrowly tailored nor the least restrictive means of obtaining the governmental objective.

Regardless of the format of presenting such proof of voter registration, an unsettled question of Michigan law would be whether is there any time limit for rehabilitating signatures more than 180 days old. While the Bureau does not need to decide this question now or at anytime, we are not requesting any specific amount of time, but if a standard were to exist, it should be at least one to two years. An Attorney General opinion from AG Frank Kelley opined that the period is even up to four years since the signature threshold is based on turnout at gubernatorial elections (OAG 4813). **Exhibit C**. Of the 24 states with initiatory processes, some provide for supplemental filing of petitions after an initial turn-in (Michigan does not), or provide for a year or more to circulate petitions for signers (for example Mississippi provides for one year, Oregon two years, Ohio—no time limit). Rebutting the presumption that signatures more than 180 days are stale and void in Michigan should provide for at least another 180 days, if not longer.

Therefore, we believe the solution proposed, providing a QVF report with the dates in question proving the registration of individual signers if a signature is beyond 180 days prior to submission, is a much more practical, less burdensome, less restrictive way to achieve the objective of assuring only registered voters are signing petitions to place a proposal on a Michigan ballot. The advent of modern technology and current First Amendment jurisprudence also square and facilitate the reasonableness of this proposed solution. Of course, the Bureau wouldn't need to have one single format for reports or proving registration—there may be other methods available that would adequately address any information verification or presentation issues—so a catchall provision in any policy that provides for the Bureau to accept other adequate methods deemed reasonable on a case-by-case basis would provide additional flexibility for other options not considered herein or that may arise in the future.

We respectfully request a meeting with Director Thomas and Bureau staff, and/or the opportunity to address the Bureau of Canvassers at it's next meeting to assure speedy resolution to this issue. Obviously a policy change requires some due diligence on everyone's part, but this

is a matter which should be addressed expeditiously given the important interests at stake. I would be happy to discuss with you in the meantime to help finalize any details or language needed for an updated policy. Thank you for your consideration and we look forward to working with you on an updated standard.

Very truly yours,

HANK LAW, PLLC

Jeffrey A. Hank  
Attorney and Counselor

JAH/  
Enclosures: Exhibits A-C  
Copies:

# **EXHIBIT 2**

*Procedure for electing  
procedure*

MINUTES OF MEETING  
OF THE  
BOARD OF STATE CANVASSERS  
AUGUST 8, 1986

A meeting of the Board of State Canvassers was held on August 8, 1986 in room 124 of the Mutual Building, 208 North Capitol Avenue, Lansing, Michigan. Those present were: Stephen C. Bransdorfer, Chairman; Michael I. Pyne, Vice-Chairman; William Gnodtke, member; Bernice Shields, member; Christopher M. Thomas, Secretary; Bradley S. Wittman, Elections Division staff member; Gary P. Gordan, Assistant Attorney General; Deborah A. Devine, Assistant Attorney General; and Phyllis Mellon, Director of the Department's Research Division.

The meeting was called to order by Mr. Bransdorfer at 3:15 p.m. Mr. Bransdorfer instructed the Secretary to file the Notice of Meeting and the Affidavit of Posting thereof.

The Chairman asked if there was a motion to approve the minutes of the meeting of April 21, 1986. Mr. Pyne moved that the minutes be approved as submitted. Ms. Shields supported the motion and it carried 3-0. (Mr. Gnodtke abstained from the vote as his appointment to the Board came after the April 21, 1986 meeting.)

The Chairman asked if there was a motion to approve the minutes of the meeting of June 25, 1986. Ms. Shields moved that the minutes be approved as submitted. Mr. Gnodtke supported the motion and it carried 4-0.

The Secretary presented to the Board 72 initiative petition sheets filed on July 7, 1986 by the Michigan Citizens Lobby, 106 W. Allegan Street, Lansing, Michigan 48933. The Secretary explained that a determination as to the validity of the petition sheets was required as the address listed by the circulator of the sheets raised an issue never before addressed by the Board. After distributing several of the petition sheets to the Board members for inspection, the Secretary explained that the circulator of the sheets, Amanda Green, listed her address as "Oakland University, Hamlin Hall." The Secretary further explained that the staff had determined that Ms. Green did not have a street address and that her registration record, held in the City of Auburn Heights, showed her address to be "Oakland University, 101A Hamlin Hall." The Secretary stated that the staff sought the Board's determination as to whether "Oakland University, Hamlin Hall" constituted a sufficient address on the circulator certificates completed by Ms. Green. The Secretary further stated that the issue appeared to be whether the "101A" portion of Ms. Green's address was an analogous to a street number or an apartment number.

John Pirich, an attorney representing Detroit Edison and Consumers Power, addressed the Board to argue that the 72 petition sheets should be rejected as Ms. Green's room number was required to complete her address on the circulator certificates. Joseph Tuchinsky, Executive Director of the Michigan Citizens Lobby, addressed the Board to argue that the 72 petition sheets should be accepted as under the circumstances involved "Oakland University, Hamlin Hall" constituted a sufficient address on the circulator certificates.

After the completion of the arguments, Mr. Gnodtke moved that the Board reject the 72 petition sheets in question as the address listed by the cir-

culator on the petition sheets was not consistent with the circulator's registration address. Mr. Pyne supported the motion and it carried 3-1 with Mr. Bransdorfer casting the "no" vote. Mr. Bransdorfer directed the staff to use the Board's determination as a guide when reviewing petitions in the future.

The Secretary presented to the Board 172 initiative petition sheets filed on July 7, 1986 by L. Brooks Patterson, Prosecuting Attorney, Oakland County, 1200 N. Telegraph Road, Pontiac, Michigan 48820. The Secretary explained that a determination as to the validity of the petition sheets was required as the signatures on the sheets raised an issue never before addressed by the Board. After distributing several of the petition sheets to the Board members for inspection, the Secretary explained that the body of each petition sheet contained a single printed name which matched the name of the circulator of the sheet. The Secretary further explained that when executing the circulator's certificate, the person signed his or her name in cursive. The Secretary stated that a printed signature was normally accepted under a petition "face review" conducted by the staff as many individuals do not sign their name in cursive. The Secretary further stated that the staff sought the Board's determination as to whether the 172 petition sheets bearing the 172 printed signatures were acceptable as in each case, the circulator's certificate gave evidence that the signer did not, in fact, print his or her signature.

Michael Modelski, an attorney representing Citizens for Capital Punishment, addressed the Board to argue that the 172 petition sheets should be accepted as valid by the Board. Tom Downs, an attorney representing the Coalition Against Capital Punishment, addressed the Board to argue that the 172 petition sheets should be rejected by the Board.

After the completion of the arguments, Mr. Pyne suggested that the Board table the matter until later in the meeting. The Chairman accepted Mr. Pyne's suggestion and announced that the Board would take up the next item on the agenda -- the implementation of the following section of Michigan election law:

168.472a. It shall be rebuttably presumed that the signature on a petition which proposes an amendment to the constitution or is to initiate legislation, is stale and void if it was made more than 180 days before the petition was filed with the office of the secretary of state.

The Secretary stated that as requested by the Board at its meeting of July 31, 1986, the staff counted the number of signatures executed between November 2, 1982 and January 7, 1986 ("old signatures") and between January 8, 1986 and July 7, 1986 ("new signatures") on the initiative petitions filed by the Michigan Citizens Lobby and L. Brooks Patterson. The Secretary further stated that under the staff's count, the valid initiative petition sheets filed by the Michigan Citizens Lobby contained 314,614 "old signatures" and 55,572 "new signatures" and that the valid initiative petition sheets filed by L. Brooks Patterson contained 170,753 "old signatures" and 171,133 "new signatures."

The Chairman stated that before MCL 168.472a could be implemented, the following three issues had to be resolved by the Board: (1) Who is responsible for rebutting the presumption that the "old signatures" on the initiative petitions are "stale and void"? (2) What is meant by the phrase "stale and void"? and (3) What procedure should be established for rebutting the presumption that the "old signatures" are stale and void?

The following persons assembled before the Board to speak on the three issues: John Pirich and Mike Hodge, attorneys representing Detroit Edison and Consumers Power; Tom Downs an attorney representing the Coalition Against Capital Punishment; Michael Modelski, an attorney representing the Citizens for Capital Punishment; and David Shaltz, an attorney representing the Michigan Citizens Lobby.

The Chairman stated that the proponents and the challengers of the initiative petitions filed by the Michigan Citizens Lobby and L. Brooks Patterson could designate one spokesperson to address the Board on the issues which needed to be resolved to implement MCL 168.472a.

The Board and the persons assembled before the Board discussed the first issue at length, i.e., who is responsible for rebutting the presumption that the "old signatures" on an initiative petition are "stale and void."

At the conclusion of the discussion, Mr. Pyne moved that the Board find the petition submitted by the Michigan Citizens Lobby and the petition submitted by L. Brooks Patterson insufficient due to Judge Bell's July 18 ruling that MCL 168.472a was constitutional and that further, the Board not place the two issues on the November 4, 1986 general election ballot unless a sufficient number of "old signatures" were proven valid as provided under MCL 168.472a. Ms. Shields supported the motion and it carried 4-0.

In a second motion, Mr. Pyne moved that it is the responsibility of the filers of the two initiative petitions to rebut the presumption that "old signatures" appearing on the petition are "stale and void." Ms. Shields supported

the motion and it carried 4-0.

The Board and the persons assembled before the Board next discussed the second issue at length, i.e., the meaning of the phrase "stale and void."

At the conclusion of the discussion, Mr. Gnodtke moved that the proponent of an initiative petition could rebut the presumption that a signature affixed to the petition more than 180 days before the petition was filed is "stale and void" by showing that the person who executed the signature was properly registered to vote at the time the signature was affixed to the petition. Mr. Bransdorfer supported the motion. With the motion on the table, the Chairman recessed the meeting for a break at 5:05 p.m.

At 5:40 p.m. the Chairman called the meeting back to order. Mr. Gnodtke withdrew the motion he made prior to the recess and moved that the proponent of an initiative petition could rebut the presumption posed by MCL 168.472a, i.e., that a signature affixed to an initiative petition more than 180 days before the filing of the petition is "stale and void," by proving that the person who executed the signature was properly registered to vote at the time the signature was executed. Mr. Pyne added that to rebut the presumption posed by MCL 168.472a, the proponent of an initiative petition would also have to show that the signer was registered to vote "within the 180 day window period." Mr. Pyne further stated that the proponents of an initiative petition could prove that a signer was registered to vote "within the 180 day window period" by producing an affidavit or certificate executed by the signer or the clerk of the city or township in which the signer was registered. Mr. Bransdorfer clarified that under the motion, a random sampling process could not be used to rebut the pre-

sumption posed by MCL 168.472a. Mr. Bransdorfer further clarified that under the motion, the Board would consider the presumption posed by MCL 168.472a successfully rebutted even if it was shown that the signer's city or township of registration at the time the petition was signed differed from the signer's city or township of registration during the "180 day window period."

Mr. Bransdorfer stated that it had been moved that the proponent of an initiative petition could rebut the presumption posed by MCL 168.472a by (1) proving that the person who executed the signature was properly registered to vote at the time the signature was executed and (2) proving with an affidavit or certificate of the signer or appropriate clerk 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. Mr. Gnodtke assented that his motion was properly stated. Mr. Bransdorfer supported the motion and it carried 4-0.

Mr. Bransdorfer stated that while the Board had always accepted a petition signature as valid if the signer was registered to vote at the time the petition was signed, it was clear that the state legislature intended in its enactment of MCL 168.472a that an additional standard be imposed on signatures affixed to an initiative petition more than 180 days before the filing of the petition. Mr. Bransdorfer further stated that this was why the Board was stipulating that to rebut the presumption posed by MCL 168.472a, the proponent of an initiative petition had to prove that the signer was registered to vote both at the time the petition was signed and within the "180 day window period." Mr. Bransdorfer explained that if the Board did not impose the second standard, i.e., that it be shown that the signer was registered to vote within the "180 day window period,"

MCL 168.472a would not have any clear effect.

Mr. Pirich addressed the Board to request that it accept sixteen boxes of signature challenges he had brought to the meeting. The Board agreed to accept the challenges.

The Secretary again presented to the Board the 172 initiative petition sheets filed by L. Brooks Patterson which the Board had discussed earlier in the meeting. The staff recommended that the sheets be accepted. A motion was made to accept the petition sheets. The motion was supported and it carried 4-0.

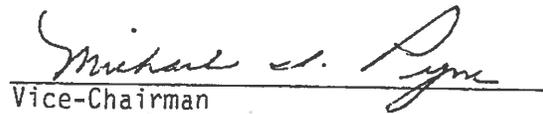
Tom Downs addressed the Board to request that it order the preparation of a random signature sample for the initiative petition filed by L. Brooks Patterson. Mr. Downs explained that he was making the request as time constraints could prohibit the preparation and completion of a random signature sample should Judge Bell's July 18, 1986 ruling be reversed by the Court of Appeals. The Board did not entertain a motion on Mr. Down's request. In a second request, Mr. Downs asked the Board to sample the initiative petition filed by L. Brooks Patterson for duplicate signatures. The Board did not entertain a motion on Mr. Down's second request. In a third request, Mr. Downs asked the Board to direct the staff to provide his clients with a computer generated print-out of signature designations that could be used to sample the petition filed by L. Brooks Patterson. The Board indicated that Mr. Down's third request could be honored under arrangements made with and at the discretion of the the Elections Division staff.

There being no further business to address, the Chairman adjourned the

meeting at 6:06 p.m.

The following position papers submitted to the Board prior to and at its meeting of August 8, 1986 are incorporated into these minutes by reference: a paper dated August 4, 1986 submitted by Brian K. Johnson; a paper dated August 4, 1986 submitted by L. Brooks Patterson; papers dated August 4 and August 8, 1986 submitted by Dorean Koenig, Tom Downs, and Eugene Wanger; a paper dated August 4, 1986 submitted by David Shaltz and Judy M. Martin; and a paper dated August 7, 1986 submitted by John Pirich.

  
Chairman

  
Vice-Chairman

Member \_\_\_\_\_

  
Member

# **EXHIBIT 3**



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

To: Members of the Board of State Canvassers

From: Christopher M. Thomas, Secretary of the Board of State Canvassers

Date: December 14, 2015

Re: Discussion of the request submitted by Jeffrey Hank, asking the Board of State Canvassers to revise its policy regarding the method for rebutting the statutory presumption that a signature on a petition that proposes an amendment to the constitution or to initiate legislation is stale and void if made more than 180 days before the petition was filed

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Mr. Jeffrey Hank, counsel for the Michigan Comprehensive Cannabis Law Reform Committee whose initiative petition was approved as to form by this Board on June 11, 2015, has asked the Board of State Canvassers to reconsider its policy regarding the rehabilitation of stale signatures. A copy of Mr. Hank's request was distributed to Board members at the December 3, 2015 meeting.

Under section 472a of the Michigan Election Law (MEL), MCL 168.472a,

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.

Approximately one year after this provision was enacted, the Attorney General issued an opinion concluding that the 180-day provision was unconstitutional and that "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." Op Atty Gen No 4813 (Aug. 13, 1974).<sup>1</sup> As a result of the Attorney General's opinion, the Board did not enforce the provisions of section 472a until 1986, when the Michigan Supreme Court held that the statute was constitutional. *Consumers Power Co v Attorney General*, 426 Mich 1 (1986).

Also in 1986, the Board unanimously adopted the following procedure for rebutting the statutory presumption that a signature on a petition which proposes an amendment to the constitution or to initiate legislation is stale and void if made more than 180 days before the petition was filed:

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<sup>1</sup> <http://www.ag.state.mi.us/opinion/datafiles/1960s/op04104.pdf>

[T]he proponent of an initiative petition could rebut the presumption posed by MCL 168.472a by:

- (1) Proving that the person who executed the signature was properly registered to vote at the time the signature was executed and
- (2) Proving with an affidavit or certificate of the signer or appropriate clerk 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.

Minutes of the August 8, 1986 meeting of the Board of State Canvassers. Mr. Hank has asked the Board to revise this policy.

At the time that the 1986 policy was implemented, voter registration records were maintained exclusively by the clerks of Michigan's 1,500 cities, villages and townships and no countywide or statewide voter registration file existed. The only method then available for confirming a signer's status as a registered voter was to inquire with the local clerk and/or arrange for an inspection of the clerk's registration records.

The statewide Qualified Voter File (QVF) lists all individuals who are registered to vote in Michigan, including their names, current addresses, address histories, and other identifying information. The Bureau of Elections is able to provide this information<sup>2</sup> upon request.

*Draft policy offered for discussion purposes:* Based on the foregoing, I offer the following policy for the Board's consideration:

In order to rebut the statutory presumption that a signature affixed to an initiative or constitutional amendment petition more than 180 days prior to the date of filing is stale and void, the petition sponsor must do all of the following at the time the petition is filed:

1. Separate and identify all of the sheets that include signatures gathered earlier than 180 days prior to the date of filing from the remainder of the filing.
2. Attach to each such sheet a copy of each signer's QVF record including address history, demonstrating that the signer (a) was registered to vote in the city or township listed on the date of signing, and (b) was registered to vote in Michigan during the 180-day period immediately preceding the date of filing. For any signer who does not satisfy both of these criteria, the petition sponsor must attach a written statement indicating that the presumption has not been rebutted.
3. Submit an affidavit executed by the individual who reviewed the signers' QVF records, attesting that (a) the affiant personally reviewed each signer's QVF record, (b) evidence has been submitted for the purpose of rebutting the statutory presumption of staleness for the following signers (listed by name in order of filing), and (c) evidence has not been submitted to rebut the statutory presumption of staleness for the following signers (listed by name in order of filing).

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<sup>2</sup> Excluding those data elements that are, by law, confidential and exempt from disclosure (such as a voter's digitized signature, driver's license number, month and day of birth, etc.) See MCL 168.509gg.