



John Griffin
Executive Director
Associated Petroleum Industries of Michigan

124 W. Allegan St., Suite 1210
Lansing, MI 48933
Telephone 517-372-7455
Email griffinj@api.org
www.api.org

January 8, 2016

Jeannette Bradshaw, Chair
Norman Shinkle, Vice Chair
Julie Matuzak
Colleen Pero
Christopher Thomas, Secretary
c/o Bureau of Elections
Richard H. Austin Building, 1st Floor
430 W. Allegan St.
Lansing, MI 48918
elections@michigan.gov

VIA EMAIL

SUBJECT: Comments in Opposition to Adopting a Policy to Utilize the Statewide Qualified Voter File as a Means to Rebut the Staleness Presumption of MCL 168.472a

The Associated Petroleum Industries of Michigan (“API-MI”) respectfully submits the following comments on the Board of State Canvassers’ draft policy to rebut the staleness presumption of MCL 168.472a (the “Draft Policy”) by utilizing the statewide qualified voter file (“QVF”). Specifically, by using a signer’s QVF record address history, the Draft Policy allows a petition sponsor to use only the QVF to prove that the signer (1) was registered to vote in the city or township listed on the date of signing, and (2) was registered to vote in Michigan during the 180-day period immediately preceding the date of filing. API-MI offers these written comments in opposition to adopting a policy to utilize the statewide QVF as a means to rebut the staleness presumption of MCL 168.472a.

I. Interest of the Associated Petroleum Industries of Michigan

The American Petroleum Institute (“API”), doing business in Michigan through its Lansing offices as API-MI, is the primary national trade association of America’s technology-driven oil and natural gas industry. API’s 650 members are involved in all segments of the industry, including the exploration, production, refining, shipping, and transportation of crude oil and natural gas. In Michigan alone, nearly

38,000 jobs were supported by unconventional oil and gas development in 2012, a figure projected to grow to over 64,000 by 2020 and over 78,500 by 2035. These jobs provided \$3.6 billion in economic activity and over \$420 million in state and local taxes, or the equivalent of 1.8% of the State's tax revenues, in 2012.¹ API members have invested billions of dollars in Michigan's oil and natural gas industry. Together with its member companies, API-MI is committed to ensuring a strong, viable oil and natural gas industry capable of meeting the energy needs of our Nation and Michigan in a safe and environmentally responsible manner.

II. The Board of State Canvassers Lacks the Authority to Adopt the Draft Policy

Although the Board of State Canvassers is authorized under Article II, Section 7 of the Michigan Constitution, the Board of State Canvassers is "established by law." Because the Board of State Canvassers is formed by the Legislature, all of its authority must be found in statutory enactments. *Union Carbide Corp. v. Public Service Comm.*, 431 Mich. 135, 146 (1988); *Huron Portland Cement Co. v. Public Service Comm.*, 351 Mich. 255, 262 (1958). Generally, a statute that grants power to an administrative agency is strictly construed. *Mason Co. Civic Research Council v. Mason Co.*, 343 Mich. 313, 326 (1955). Administrative authority must be granted affirmatively or plainly, because doubtful power does not exist. *Id.* at 326-327; *Taylor v. Michigan Public Utilities Comm.*, 217 Mich. 400, 402-403 (1922). The authority of the Board of State Canvassers is set forth in the Michigan Election Law. *See generally* MCL 168.22-168.22g. Nowhere does the Michigan Election Law grant the Board of State Canvassers rulemaking authority, and the Draft Policy cites none. In fact, with respect to petitions, the Legislature has granted rulemaking authority only to the Secretary of State. *See* MCL 168.31(2).

III. The Draft Policy Ignores the Limited Use of the Statewide Qualified Voter File as Set Forth by the Legislature

According to Section 472a of the Michigan Election Law:

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 Draft Policy seeks to utilize only the statewide QVF to rebut the presumption of staleness set forth in MCL 168.472a. However, the Legislature has strictly limited the use of the QVF to determine the validity of petition signatures only "when the qualified voter file contains digitized signatures." MCL 168.476. Significantly, the Draft Policy does not require an authenticated match of digitized signatures. Therefore, the Draft Policy either misuses the QVF or exceeds the clear statutory limitation on the use of the QVF. Either way, because an agency may not adopt a rule which does not comply with legislative

¹ IHS, *America's New Energy Future: The Unconventional Oil and Gas Revolution and the US Economy*, Vol. 2 – State Economic Contributions, available at http://www.energyxxi.org/sites/default/files/Americas_New_Energy_Future_State_Highlights_Dec2012.pdf, at 74.

intent (see *Blank v. Michigan Dep't of Corrections*, 462 Mich. 103, 126 (2000)), even the Secretary of State (who does have rulemaking authority with respect to petitions pursuant to MCL 168.31(2)) could not adopt a policy which violates the express statutory language.

IV. The Draft Policy Seeks to Control Issues that Can Only Be Determined by the Legislature

The Draft Policy, which is designed to have the force and effect of law, represents a determination of policy that can only be adopted by the Legislature. Article II, Section 4 of the Michigan Constitution vests the Legislature with the exclusive ability to make policy determinations concerning elections. Section 472a of the Michigan Election Law refers to a “rebuttable presumption” as to what constitutes a “stale and void” signature; however, nowhere in the Michigan Election Law are there any standards to rebut a presumption of being “stale and void.” Without any standards, the adoption of the Draft Policy, even if enacted as a rule by the Secretary of State under rulemaking authority with respect to petitions pursuant to MCL 168.31(2), would represent an unconstitutional delegation of legislative power.

The test for determining whether the limits on the exercise of discretion conferred on an administrative official are sufficiently defined to avoid an unconstitutional delegation of legislative power was set forth by the Michigan Supreme Court in *Michigan Dep't of Natural Resources v. Seaman*, 396 Mich. 299, 309 (1976):

First, the act in question must be read as a whole; the provision in question must be construed with reference to the entire act. Next, the standard should be as reasonably precise as the subject matter requires or permits. Third, if possible, the statute must be construed as being valid, that is, it must be construed as conferring administrative, not legislative, power and as giving discretionary, not arbitrary, authority. Last, the statute must satisfy due process requirements.

See also Attorney General v. Public Service Comm., 161 Mich. App. 506, 510 (1987), lv. den. 429 Mich. 879 (1987) (citing *Seaman*).

Nowhere in the Michigan Election Law are there any “reasonably precise” standards (or any standards whatsoever) which could lead to the adoption of the Draft Policy as the policy to validate an otherwise “stale and void” signature under Section 472a of the Michigan Election Law.

Stated differently, in *Blank*, the Michigan Supreme Court stated that “Policy determinations are fundamentally a legislative function.” 462 Mich. at 116. General language may be used in the authorizing statute only so “long as the exact policy is clearly made apparent.” *Id.* at 126 (internal citation omitted). In the present case, there can be no dispute that the Draft Policy is a policy determination. Moreover, there also can be no dispute that there exists no “exact policy” in the Michigan Election Law to authorize the adoption of the QVF as the means to validate an otherwise

“stale and void” signature under Section 472a. Therefore, the Draft Policy represents a policy that can only be determined by the Legislature.

As further evidence that this is an issue reserved for the Legislature, over the years, the Legislature has considered different methods to clarify the “stale and void” standard of MCL 168.472a. For example, in 2008, Senate Bill 1086 was introduced to replace the rebuttable presumption of staleness with a hard and fast rule that signatures older than 210 days were stale and void. If the Board of State Canvassers or the Secretary of State were to adopt the Draft Policy, they would effectively bypass the Legislature on an issue it has recently considered and amend the text of MCL 168.472a. When faced with similar situations, Michigan courts have not hesitated to invalidate policies that effectively amend a statute. *See, e.g., Institute of Michigan v. Commissioner, Financial & Ins. Services, Dep’t of Labor & Economic Growth*, 486 Mich. 370 (2010) (invalidating insurance rules prohibiting insurance scoring to determine as rates as not “within the matter covered by the enabling statute”). “[S]uch arguments are properly addressed to the legislature, not to us. We refuse to sit as a ‘super legislature’ to weigh the wisdom of [the] legislation.” *Spalo v. A&G Enterprises*, 437 Mich. 406, 412 (1991) (quoting *Ferguson v. Skrupa*, 372 U.S. 726, 731 (1963)).

If the Draft Policy is to be adopted, it can be only adopted by the Legislature. API-MI respectfully urges the Board of State Canvassers and the Secretary of State to decline any invitation to become a “super legislature” to grant via administrative fiat new abilities of petition sponsors to avoid the “stale and void” requirements of MCL 168.472a and stretch the statutory limitations on use of the QVF beyond all recognition.

* * *

Thank you for the opportunity to provide comments. If you have any questions, please do not hesitate to contact me at (517) 372-7455, or griffinj@api.org.

Sincerely,

/s/ John Griffin
Executive Director

Malerman, Melissa (MDOS)

From: SOS, Elections
Sent: Friday, January 08, 2016 1:44 PM
To: Malerman, Melissa (MDOS)
Subject: FW: Public Comment on Rebuttable Signature Policy

From: lawyer.lavigne@gmail.com [<mailto:lawyer.lavigne@gmail.com>] **On Behalf Of** Thomas Lavigne
Sent: Friday, January 08, 2016 1:43 PM
To: SOS, Elections
Subject: Public Comment on Rebuttable Signature Policy

To Whom It May Concern,

I am a lawyer in practice over 25 years, who has practiced law in three states. I have worked with numerous ballot proposals over the years.

I support an update to the Board of Canvassers' 1986 policy regarding rebutting the presumption that signatures beyond 180 days are considered stale and void for direct democracy ballot proposals.

Our Michigan Constitution provides that all power derives from the People. Michigan should use its modern database of registered voters for the State's citizens to avail themselves of these rights.

The Board plays an important role in making sure our democracy functions well and now the Board has the opportunity to craft good policy.

The policy recommended by staff is a sensible improvement over current policy, with a few minor revisions in process to make the review process more manageable. I urge the Board to adopt a new policy along these lines.

The prior policy no longer makes sense in light of the enactment of laws creating the Qualified Voter File and changes in computer technology.

Therefore, I support an update to the Board of Canvassers' 1986 policy regarding rebutting the presumption that signatures beyond 180 days are considered stale and void for statutory initiatives or constitutional amendments.

However, I would suggest two technical modifications to better assist in validating petitions:

1) Petitions should not be separated based on containing signatures more than 180 days prior to turn-in to the Bureau; otherwise it is overly burdensome.

2) Additional sheets should not be attached to each petition. This is unduly burdensome. A single report with references to specific petitions that are numbered, and signature line numbers that for those signors that are beyond 180 days, should suffice. This report would identify and rebut any necessary signatures. This would also create an easily referenced number of valid signatures that are beyond 180 days old as sampling signatures beyond 180 days may not suffice-- since every one of those signatures needs to be individually rebutted as still being a registered voter.

Moreover, in 1986 everyone agreed the Board had authority to craft a policy to deal with rebuttable signatures, which it did and still does maintain that authority. Comments in 1986 addressed the best evidence rule-- which at that time was deemed either voter affidavits or verification from municipal clerks. The policy improvement I and others are advocating is essentially the same now, but with the advent of modern election law creating the QVF and current computer technology, the best evidence to determine validity now is by using the QVF.

Therefore, I urge the Board to adopt a new policy along the lines suggested by the Bureau staff, with minor modifications as suggested herein.

Thomas M.J. Lavigne J.D.

Licensed in Michigan, Hawaii (inactive) and N.C. (inactive)

Cannabis Counsel® P.L.C. Law Firm

Lawyers Who Roll The Right Way

313-446-2235 (ABEL) office

2930 Jefferson Avenue East

Detroit, Michigan 48207

313-784-9327 fax

tom@cannabiscounsel.com

www.cannabiscounsel.com

Confidentiality Notice: ATTORNEY-CLIENT PRIVILEGE - ATTORNEY WORK PRODUCT

This E-mail contains confidential legal stuff. If it wasn't intended for you, you should probably delete it without reading it, or bad legal stuff could happen to you.

Anything in this email that discusses settlement or compromise negotiations is protected from subsequent use by FRE and MRE 408 and FRE and MRE 410.

ELECTRONIC SIGNATURE: Nothing contained in this communication is intended to constitute an electronic signature or subscription under MCR 2.507 unless a specific statement to the contrary is included in this message.



MICHIGAN OIL AND GAS ASSOCIATION

124 W. ALLEGAN ST., SUITE 1610 • LANSING MI 48933 • Telephone: 517/487-1092 • Fax: 517/487-0961

Erin McDonough
President & CEO
Michigan Oil And Gas Association
124 W. Allegan, Suite 1610
Lansing, MI 48933

Jan. 8, 2016

Jeannette Bradshaw, Chair
Norman Shinkle, Vice Chair
Julie Matuzak
Colleen Pero
Christopher Thomas, Secretary
c/o Bureau of Elections
Richard H. Austin Building, 1st Floor
430 W. Allegan St.
Lansing, MI 48918
elections@michigan.gov

Subject: Comments in Opposition to Adopting a Policy to Utilize the Statewide Qualified Voter File as a Means to Rebut the Staleness Presumption of MCL 168.472a

The Michigan Oil And Gas Association (MOGA) respectfully submits the following comments on the Board of State Canvassers' draft policy to rebut the staleness presumption of MCL 168.472a (the "Draft Policy") by utilizing the statewide qualified voter file ("QVF"). Specifically, by using a signer's QVF record address history, the Draft Policy allows a petition sponsor to use only the QVF to prove that the signer (1) was registered to vote in the city or township listed on the date of signing, and (2) was registered to vote in Michigan during the 180-day period immediately preceding the date of filing. MOGA offers these written comments in opposition to adopting a policy to utilize the statewide QVF as a means to rebut the staleness presumption of MCL 168.472a.

- I.** The Michigan Oil And Gas Association (MOGA) represents the exploration, drilling, production, transportation, processing and storage of crude oil and natural gas in the State of Michigan. MOGA has nearly 1,000 members of which includes independent oil companies, major oil companies, and the exploration arms of various utility companies.

Oil and gas is a near-\$4 billion dollar industry in Michigan. Roughly 8,000 Michigan workers are employed directly in Michigan's oil and natural gas exploration and production activity, with another estimated 37,000 jobs provided by production-related activities. Furthermore, the industry provides, through severance taxes, oil and gas fees and lease revenues, on average over \$100 million annually to the State of Michigan. Finally, in 2015 alone over 50% of Michigan State Parks funding comes from the oil and gas industry via the State Parks Endowment Fund.

- II.** While the Board of State Canvassers is authorized under Article II, Section 7 of the Michigan Constitution, the Board of State Canvassers is "established by law." Due to the Board of State Canvassers being formed by the Legislature, its authority must be found in statutory enactments such as *Union Carbide Corp. v. Public Service Comm.*, 431 Mich. 135, 146 (1988).

Nowhere does the Michigan Election Law grant the Board of State Canvassers proper rulemaking authority, and the Draft Policy does not cite any. Regarding petitions, the Legislature has granted rulemaking authority only to the Secretary of State (MCL 168.31(2).)

- III.** The Draft Policy seeks to utilize only the statewide QVF to rebut the presumption of staleness set forth in MCL 168.472a.

The Legislature has strictly limited the use of the QVF to determine the validity of petition signatures. The Draft Policy either misuses the QVF or exceeds the clear statutory limitation on the use of the QVF.

The Secretary of State (who does have rulemaking authority with respect to petitions pursuant to MCL 168.31(2)) could not adopt a policy which violates the express statutory language.

- IV.** The Draft Policy, which is designed to have the force and effect of law, represents a determination of policy that can only be adopted by the Legislature.

Nowhere in the Michigan Election Law are there any "reasonably precise" standards (or any standards whatsoever) which could lead to the adoption of the Draft Policy as the policy to validate an otherwise "stale and void" signature under Section 472a of the

Michigan Election Law. On an issue of this importance, the Board should defer to the Legislature. It is certainly in the purview of the Board to make its views known and to make recommendations to the Legislature.

MOGA appreciates the opportunity to provide such comments, and look forward to working together in the future. If any further information or questions are requires, please don't hesitate to contact us at (517) 487-1092, or emedonough@michiganoilandgas.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin McDonough". The signature is written in a cursive, flowing style.

Erin McDonough,
President & CEO
Michigan Oil And Gas Association

Malerman, Melissa (MDOS)

From: SOS, Elections
Sent: Friday, January 08, 2016 12:58 PM
To: Malerman, Melissa (MDOS)
Subject: FW: Comment on Proposed Change to 180-Day Rule for Petition Signatures

From: David Cahill [mailto:cahilld@comcast.net]
Sent: Thursday, January 07, 2016 10:05 AM
To: SOS, Elections
Subject: Comment on Proposed Change to 180-Day Rule for Petition Signatures

Dear Board of State Canvassers,

I am writing to ask that you approve the Bureau of Elections' proposal to modify the "180 day rule" for checking petition signatures. The BOE has done a solid and professional piece of work, and I think that its proposal is a sound one.

If the Bureau had unlimited staffing and funding, there is no reason that it could not be required to check all signatures, even those coming in substantially after 180 days. After all, under Michigan Compiled Laws 117.25(1), signatures on city charter amendment petitions are good for an entire year. And it is not uncommon for city clerks to check each signature.

However, money is tight, and now is no time to be adding a lot of state staff.

The Bureau's proposal strikes a reasonable compromise by continuing to put the burden of checking signatures older than 180 days on the petitioner, and by allowing the use of the modern Qualified Voter File.

Therefore, this proposal is in the public interest, and should be approved.

Sincerely,

David Cahill

Attorney at Law

1418 Broadway

Ann Arbor, MI 48105

(734) 769-0753

Malerman, Melissa (MDOS)

From: SOS, Elections
Sent: Friday, January 08, 2016 12:56 PM
To: Malerman, Melissa (MDOS)
Subject: FW: 180 day signature policy

From: Kevin McCaffery [mailto:████████████████████]
Sent: Friday, January 08, 2016 9:04 AM
To: SOS, Elections
Subject: 180 day signature policy

The ability of Michigan citizens to petition our government for changes is an essential part of the democratic process in our state. A key part of that process is the rebuttal of signatures submitted to the Board of State Canvassers. I fully support the changes recommended by the BOSC staff to the Board of Canvassers 1986 policy regarding old or stale signatures. The Qualified Voter file now makes it unnecessary to attach affidavits along with the signatures that are older than 180 days. Adopting the changes recommended by the BOSC staff will streamline the petitioning process and strengthen the democratic process in our great state. I urge the Board to adopt this policy. Thank you for your careful consideration of this important matter.

Kevin McCaffery

████████████████████

████████████████████

Malerman, Melissa (MDOS)

From: SOS, Elections
Sent: Friday, January 08, 2016 12:55 PM
To: Malerman, Melissa (MDOS)
Subject: FW: Stale and Void Petition Signatures

From: Phil Bellfy [mailto:████████████████████]
Sent: Friday, January 08, 2016 10:43 AM
To: SOS, Elections
Subject: Stale and Void Petition Signatures

To the State Board of Canvassers:

Excerpts from the MICHIGAN CONSTITUTION:

Article I - § 1 - Political power:

All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Article I - § 3 - Assembly, consultation, instruction, petition:

The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.

Article II - § 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, and the power to approve or reject laws enacted by the legislature, called the referendum.

Given these Constitutional provisions, it appears that the method enacted by the Legislature for petition circulators to rebut "stale and void" signatures on those petitions, that is, those registered voters who signed a petition outside of an arbitrary and capricious 180 day "window," is a violation of those signers' Constitutional right to Initiative, Referendum, and Petition.

Therefore, the proposed use of the QVF to verify that signers were duly registered voters on the day they signed the petition, in order to rebut the unconstitutional assumption that the signatures are "stale and void" seems to be a prudent, reasonable, and Constitutional method for rebuttal.

I urge you to adapt language to remedy the current unconstitutional "rebuttal" policy provisions.

Dr. Phil Bellfy
████████████████████

Malerman, Melissa (MDOS)

From: SOS, Elections
Sent: Friday, January 08, 2016 12:54 PM
To: Malerman, Melissa (MDOS)
Subject: FW: Public Comment on Rebuttable Signature Policy

From: Jeffrey Hank [<mailto:jah@consumerpractice.com>]
Sent: Friday, January 08, 2016 12:50 PM
To: SOS, Elections
Subject: Public Comment on Rebuttable Signature Policy

To Whom It May Concern:

In regards to the staff's proposed policy change, I would suggest two technical modifications to better assist in validating petitions:

1) Petitions should not be separated based on containing signatures more than 180 days prior to turn-in to the Bureau-- Many petitions are likely to contain both types of signatures, and both sets would have to be sampled for signatures within the 180 days, and also individually checked for signatures more than 180 days old. This could amount to thousands of petitions and make review more difficult for all parties. What happens when petitions with an older signature get accidentally mixed in? These modifications would avoid all confusion.

2) Additional sheets should not be attached to each petition. This is unduly burdensome and would make review and verification more difficult for everyone-- petitioners, challengers, and the Bureau staff. A single report with references to specific petitions that are numbered, and signature line numbers that for those signors that are beyond 180 days, should suffice. This report would identify and rebut any necessary signatures. If any signature needed to be checked at anytime, referring to a single report will be less confusing for everyone than checking what could potentially be thousands of additional sheets attached to individual petitions which is organizationally very difficult to manage. This would also create an easily referenced number of valid signatures that are beyond 180 days old as sampling signatures beyond 180 days may not suffice-- since every one of those signatures needs to be individually rebutted as still being a registered voter. For example, a report that contains information like, petition number 1,405; line 6; voter John Doe; QVF reference#; would ease the ability for all to check the status of any specific signor.

Lastly, the 1986 commentary that was submitted to the Bureau in relation to the current policy outlines the concern then and now-- what is the best way to validate that persons signing more than 180 days ago are still registered voters? In 1986 everyone agreed the Board had authority to craft a policy to deal with rebuttable signatures, which it did and still does maintain that authority. Mr. Pirich's comments in 1986 addressed the best evidence rule-- which at that time was deemed either voter affidavits or verification from municipal clerks. The policy improvement I and others are advocating is essentially the same now, but with the advent of modern election law creating the QVF and current computer technology, the best evidence to determine validity now is by using the QVF. The QVF need not necessarily be the only option accepted by the Bureau-- affidavits of voters and clerks should also still be accepted, along with any other proofs the Bureau deems adequate. A one-size fits all policy is not necessary-- the Bureau should have flexibility to accept proofs that satisfy the burden of evidencing a qualified voter.

I urge the Board to adopt a new policy along the lines suggested by the Bureau staff, with minor modifications as suggested herein.

Thank you for your consideration,

--

Jeffrey A. Hank, Attorney
Mailing Address: PO Box 1358
East Lansing, MI 48826
Telephone: (888) 490-8550 ext. 107
Facsimile: (888) 490-7750
E-mail: JAH@ConsumerPractice.com

This e-mail may contain a communication protected by a legal privilege including attorney-client or attorney-work product or may be confidential. If you do not expect such a communication from the sender, please delete this message without reading it or any attachment, and then notify sender at jah@consumerpractice.com of the inadvertent miscommunication.

FOR SETTLEMENT PURPOSES ONLY: This transmittal constitutes a Compromise or Offer to Compromise and is privileged and confidential communication under the Federal Rules of Evidence Rule 408 and all appropriate and corresponding state rules of evidence.

DISCLOSURE UNDER TREASURY CIRCULAR 230: To ensure compliance with requirements imposed by the IRS, we inform you that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax-related matter addressed herein.

which will make it possible to easily verify signatures collected more than the 180-day period for petition gathering.

Yours truly,
Neal Bush

Malerman, Melissa (MDOS)

From: SOS, Elections
Sent: Wednesday, January 06, 2016 11:57 AM
To: Malerman, Melissa (MDOS)
Subject: FW: Comment re proposed change in Board of Canvassers policy
Attachments: Board of Canvassers comment rebutting signature presumption.pdf

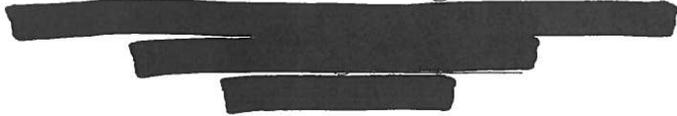
From: [REDACTED] [mailto:[REDACTED]]
Sent: Tuesday, January 05, 2016 4:57 PM
To: SOS, Elections
Subject: Comment re proposed change in Board of Canvassers policy

To Whom It May Concern: Please find attached my public comment regarding the Board of Canvassers' proposed change in 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 is filed.

Thank you,

Mark Schauer
[REDACTED]
[REDACTED]
[REDACTED]

Mark H. Schauer
Former Member of Congress, MI-7



January 5, 2016

Bureau of Elections
Michigan Department of State
430 W. Allegan Street
Lansing, MI 48918

RE: Comment on 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 is filed

To Whom It May Concern:

I write to express my support for an update to the Board of Canvassers' 1986 policy regarding rebutting the presumption that signatures beyond 180 days are considered stale and void for statutory initiatives or constitutional amendments.

Michigan's Constitution provides that all power derives from the People, and the State should use its modern database of registered voters to effectuate the realistic ability for the State's citizens to avail themselves of these rights. The prior policy no longer makes sense in light of the enactment of laws creating the Qualified Voter File and changes in computer technology.

The Board plays an important role in making sure our democracy functions well and now the Board has the opportunity to craft good policy. As someone who has worked with numerous ballot proposals over the years, the policy recommended by staff, with a few minor revisions in process to make the review process more manageable, is a sensible improvement over the current policy, and I urge the Board to adopt a new policy along these lines.

Sincerely,

A handwritten signature in black ink that reads "Mark Schauer".

Mark Schauer
Former Member of Congress
Michigan's 7th District

Malerman, Melissa (MDOS)

From: SOS, Elections
Sent: Tuesday, January 05, 2016 3:33 PM
To: Malerman, Melissa (MDOS)
Subject: FW: Comments on Change in Board Policy With Respect to 'Stale' Signatures
Attachments: Alan Fox comments on petition proposal.doc

From: Alan Fox [<mailto:alan.fox@gmail.com>]
Sent: Tuesday, January 05, 2016 1:42 PM
To: SOS, Elections
Subject: Comments on Change in Board Policy With Respect to 'Stale' Signatures

As provided in the December 15, 2015 notice my comments are attached. I would also like to request an opportunity to testify at the Board meeting as described in the notice.

Alan Fox
Practical Political Consulting, Inc
Lansing, MI

PRACTICAL POLITICAL CONSULTING

MARK GREBNER & ALAN FOX

920 N Washington Ave

Lansing, MI 48906

517-351-8274

The following are my comments regarding the proposed change in Board policy with respect to rebutting the presumption of staleness on certain petitions.

My name is Alan Fox.. I have been a member of the Ingham County Board of Canvassers since 1993 and a consultant under various titles with Practical Political Consulting since 1988.

During that time I have been involved with a wide variety of petition challenges and verifications for a variety of clients. We did the heavy lifting on the challenges to the Prevailing Wage Repeal petition in 2015 and to the SOS petition in 2006. We are currently working to verify the MCCLRC petitions and have provided advice to the antifracking effort. I should add that in all our work we have had a strong working relationship with the staff of the Bureau. They have given us clear and consistent guidance on a number of issues over the years.

My involvement with Michigan petition drives actually dates back to 1976 when I helped prepare the Graduated Income Tax petitions for submission. My father, who was then a professor of Statistics at Michigan State University, observed the sampling process then in use and it was in part due to his observations that the Bureau brought Professor Gilliland in to design the sampling process still in use today.

I applaud the Board and the Bureau for reexamining the process in light of the technical changes in verification information and the resulting changes in Bureau procedures. There are at least three kinds of people involved in this process: Petition filers, petition challengers and not least of all the Bureau staff. I am concerned that the proposal suggested would impose significant burdens on filers, and even more substantial, and perhaps insurmountable, burdens on the staff and on potential challengers.

Petition filers have some ability to control the timing of the process. Looking up and documenting perhaps tens of thousands of rebuttals is burdensome, but I know it may, at great cost, be done. I should point out, however, that the information needed to perform this documentation in the manner envisioned is not now available to the public. The Bureau would have to design a public version of the information available now to its staff and make that version available together with a simple means of printing the relevant information for submission.

Once petitions are filed, with tens of thousands of pages of supporting documentation attached, the staff would face an enormous task simply establishing a count of signatures and identifying which signatures are deemed valid enough to be subject to sampling and which are not. And having recently been involved in scanning the Prevailing Wage Repeal petitions I can tell you that adding and attaching the supporting documentation to those pages would make a challenge to filed petitions in the time required by law impossible at any cost.

I would also caution that the step of separating sheets with potentially 'stale' signatures from sheets without such signatures is less clear-cut than it appears. Many sheets will have both. From what

I have seen looking at sheets collected by clients currently in the field I would not be surprised if 10-15% of all sheets could have both. The process envisioned would require that for every sheet in the filing as many as three separate counts – for nonstale signatures, for stale signatures with documentation, for stale signatures without documentation – would have to be collected and preserved just to establish the size of the filing. This step would have to take place before pages are sequentially numbered.

As I understand the current process used to evaluate the sufficiency of constitutional amendment or initiative petitions, full sheets are discounted if there is no valid signature on a sheet or the sheet as a whole is defective, but individual signatures, no matter how obvious their defects, are addressed only through the sampling process. The Bureau counts all the signatures on sheets that survive the first screening, including signatures with no date, birth dates, or dates that are too early. These signatures are discounted later only if they are found as part of the sample to contain an invalid date.

There is no practical or legal reason to change this part of the process. The Bureau could draw a sample from all submitted signatures on valid sheets and, as it does now, disqualify a signature in the sample if it is not in the appropriate range.

The only step that needs to be added to this process is a step where the filer of a petition, in its response to the staff findings with respect to the sample, submits documentation to prove the validity of a signature dated by a signer in the period starting when authorization to use the petition sheet was granted and the date 180 days before submission. Only the documentation for these signers need be considered and their consideration would have the same effect that consideration of any other signature within the sample would have.

This is a practical process that meets the needs of all parties to the process. It serves the same purpose that the sampling method as a whole serves – to provide a manageable means of assessing hundreds of thousands of signatures on tens of thousands of sheets in the limited time periods required by the law and by our election processes.

Alan Fox
Practical Political Consulting, Inc.
January 5, 2016

Malerman, Melissa (MDOS)

From: SOS, Elections
Sent: Monday, December 21, 2015 11:59 AM
To: Bourbonais, Lori (MDOS); Malerman, Melissa (MDOS)
Subject: FW: Public comment on valid petition signature period

From: George Bartnick [mailto: [REDACTED]]
Sent: Friday, December 18, 2015 10:46 PM
To: SOS, Elections
Subject: Public comment on valid petition signature period

Greetings-

As an ordinary citizen, I heartily support the prospect of signatures on an Initiative Petition or Constitutional Amendment to be valid longer than 180 days! Totally reasonable. Let's keep the power with the people, as the laws intend!

Sincerely,

George F. Bartnick
[REDACTED]
[REDACTED]