

Christopher M. Trebilcock
T (313) 965-8575
F (313) 309-6910
Email: ctrebilcock@ClarkHill.com

Clark Hill PLC
500 Woodward Ave., Suite 3500
Detroit, MI 48226
T (313) 965-8300
F (313) 309-6910

clarkhill.com

February 15, 2021

Via email: braterj@michigan.gov

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

Re: Demand to Suspend Petition Signature Review of Unlock Michigan

Dear Director Brater:

We serve as counsel to the Keep Michigan Safe ballot question committee (“Keep Michigan Safe”). Based on media reports and other information, we understand that the Bureau of Elections (“BOE”) has started the statutory petition signature review process for the petitions submitted by the Unlock Michigan ballot question committee (“Unlock Michigan”). We request that you immediately cease and suspend the petition signature review process for the petition sheets submitted by the Unlock Michigan until the Attorney General’s criminal investigation into the illegal petition signature gathering tactics used by Unlock Michigan is complete.

As discussed more fully below, there is no prejudice to Unlock Michigan by suspending the petition review process. Suspending the process is also consistent with the Board’s statutory authority to adjourn the review process to complete investigations. MCL 168.476(2). However, the substantive and procedural due process rights of Keep Michigan Safe will be violated if the process is completed prior to the completion of the Attorney General’s criminal investigation.

The Board of State Canvassers (“Board”) has no legal duty to take action within any set period of time except that the Board must complete the canvass of an initiative petition on or before the 100th day prior to the November general election because the Board must approve ballot wording and assign a numerical ballot designation at least 60 days prior to Election Day. MCL 168.474a, .480. Here, the earliest Unlock Michigan’s initiative can appear on a ballot under the Michigan Election Law is November 2022. The canvass of Unlock Michigan’s petition is, therefore, not legally required to be completed until sometime in July 2022. As such, suspending the petition review process of the Unlock Michigan signatures will not prejudice Unlock Michigan.

Board of Canvassers

Re: *Demand to Suspend Petition Signature Review of Unlock Michigan*

February 15, 2021

Page 2

In fact, the Michigan Election Law, MCL 168.476(2), specifically empowers and recognizes the need for the Board to suspend the petition review process when questions about the validity of petition signatures are unresolved:

The board may also adjourn from time to time awaiting receipt of returns from investigations that are being made or for other necessary purposes, but shall complete the canvass at least 2 months before the election at which the proposal is to be submitted.

As such, suspending the petition review process until the Attorney General's criminal investigation is complete is compliant with the Board's statutory authority.

Second, if the Board proceeds with the petition review process prior to completion of the criminal investigation by the Attorney General the rights of Keep Michigan Safe will be violated. Under the Michigan Election Law, Keep Michigan Safe has 10 business days after the staff draws a signature sample to file any objections to the signatures and circulators in the sample. Completing the sample review prior to the conclusion of the criminal investigation 1) could result in fraudulent signatures and/or circulators being included in the staff sample and counted as valid, and 2) will deny Keep Michigan Safe the use of the results of the criminal investigation to challenge signatures and/or circulators. The signature sample review should be as complete as possible and it cannot be done thoroughly until after the criminal investigation is done. Counting fraudulent signatures and/or circulators as valid would violate the substantive and procedural due process rights of Keep Michigan Safe, as well as the rights of voters.

Finally, we want to ensure that appropriate steps are being taken to secure and preserve all the petition sheets submitted by Unlock Michigan. We understand that they have conceded the tactics used by one of their vendors, In the Field, violated the Michigan Election Law and segregated at least a portion of those petition sheets. (See, e.g., "*Despite tossed signatures, Unlock Michigan says it has support to limit Whitmer's authority*," Detroit News, Sept. 23, 2020, available at: <https://www.detroitnews.com/story/news/politics/2020/09/23/unlock-michigan-seeking-limit-whitmer-power-says-has-enough-signatures/3504414001/>). Our concerns are that based on public statements made by Unlock Michigan that not every petition sheet collected by In the Field was segregated – only those dated after the date of the media reports disclosing the unlawful activity. In addition, we have received additional reports and evidence that the unlawful conduct was not limited to those circulators working for In the Field, but also included countless volunteers who circulated signatures.

Please confirm that the petition review process by the Bureau of Elections is suspended pending the outcome of the criminal investigation by the Attorney General no later than Wednesday, February 17, 2021. If we do not receive confirmation by that date, we will consider our request denied as we will seek relief from the appropriate court.

Board of Canvassers

Re: Demand to Suspend Petition Signature Review of Unlock Michigan

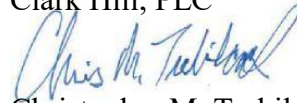
February 15, 2021

Page 3

Thank you for your attention to these important matters.

Sincerely,

Clark Hill, PLC



Christopher M. Trebilcock

Goodman Acker, P.C.

Mark Brewer

Mark Brewer

c: Heather Meingast, Michigan Department of Attorney General