

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



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Honorable Leon Drolet  
State Representative  
The Capitol  
Lansing, MI 48913

Dear Representative Drolet:

Attorney General Cox has asked me to respond to your letter asking several questions regarding the process of challenging signatures on petitions submitted to the State Board of Canvassers (Board) in support of a proposed amendment to the Constitution. The majority of your questions relate to whether the Board may consider claims of "fraudulent inducement" or "fraudulent misrepresentation" in determining the validity and sufficiency of the signatures on the petitions in order to certify the proposed amendment for placement on the ballot. Due to the subject matter of your request, I asked staff in the Appellate Division to review your letter. The following represents their findings.

Your first question asks whether the Michigan Election Law allows a signature of an elector to be "removed" from a petition after the petition has been submitted to the filing official. Your letter indicates that the word "removed" should be understood to mean "not counted towards the requisite numbers of valid signatures." Because signatures may be properly removed or discounted for many reasons after a petition is filed,<sup>1</sup> this letter will address whether an elector may request that his or her signature be removed from a petition after the petition has been filed with the Secretary of State under MCL 168.471.<sup>2</sup>

Analysis of your question begins with a review of the Michigan Election Law, MCL 168.1 *et seq.* No provision of the Michigan Election Law either expressly or implicitly indicates that a petition signer may seek the removal of his or her signature after a petition is filed with the

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<sup>1</sup> For example, with respect to petitions to amend the constitution, signatures may be invalidated because the signer was not a qualified and registered elector in the municipality where the petition was circulated, or the individual may have signed twice, or there are other defects in the date or address portions of the petition. An entire petition sheet, including all signatures on it, may be invalidated where there are defects in the heading of the petition or in the circulator certificate. MCL 168.482, 168.544c, and 168.544d. See also *Citizens for Capital Punishment v Secretary of State*, 414 Mich 913 (1982).

<sup>2</sup> "Petitions under section 2 of article XII of the state constitution of 1963 proposing an amendment to the constitution shall be filed with the secretary of state at least 120 days before the election at which the proposed amendment is to be voted upon." MCL 168.471.

relevant filing official. Moreover, although no court decisions directly address this question in the context of petitions to amend the Constitution, several Michigan Supreme Court decisions conclude in other analogous contexts that electors are not entitled to have their signatures removed once a petition is filed with the appropriate official.

For example, in *Garden City School Dist v Labor Mediation Bd*, 358 Mich 258, 260-261; 99 NW2d 485 (1959), 101 teachers signed a petition to institute review of a labor dispute by the State Labor Mediation Board under the Public Employee Relations Act, 1947 PA 336, MCL 423.201 *et seq.* The Labor Mediation Board ruled that the petition was sufficient and that it had jurisdiction in the matter. 358 Mich at 261. The school district unsuccessfully challenged the sufficiency of the petition in circuit court, arguing that the Board should have recognized the requests of 27 teachers to withdraw their names from the petition.

On appeal to the Supreme Court, the Court quoted with approval the Board's determination with respect to this issue:

"As to the 27 individuals who requested their names withdrawn from the petitions, it is the ruling of this board that request cannot be granted. In the first place, the original petitions were signed by a circulator and notarized, and the petitions are valid on their face, while none of the 27 requests were notarized. If this board were to accede to the request of the 27 individuals to have their names withdrawn from the petition, it would set a precedent whereby every petition filed with this board would be subject to attack. Instead of processing grievances, as set forth in the petitions, and assisting the parties in settling their grievances, this board would be burdened with the additional duties of ascertaining whether or not misrepresentations were made to signers of the petitions and whether or not misrepresentations were made to people requesting the withdrawal of their names from the petitions.

The board does not believe that the legislature, in passing PA 1947, No 336, intended that the board conduct such detailed investigations. It is a well-settled rule of this State that if a petition appears valid on its face, then an administrative agency cannot go beyond the petition itself and inquire as to misrepresentations." [*Garden City School Dist*, 358 Mich at 264-265.]

In affirming the circuit court, the Supreme Court observed that "[w]hen jurisdiction to perform a certain act is vested in a board by the filing of a petition with a certain number of signatures, Michigan has generally held subsequent withdrawals (absent statutory authority therefor) to be ineffective." *Id.*, at 265, citing *Patterson v Mead*, 148 Mich 659; 112 NW 742 (1907); *Koerber v Ionia County Bd of Supervisors*, 155 Mich 677; 120 NW 8 (1909); and *Fischer v Washtenaw County Bd of Supervisors*, 156 Mich 1; 120 NW 13 (1909).

In *Patterson*, a petition to improve a drain had been filed with the drain commissioner and the Court concluded that a signer of the petition could not withdraw his signature after

initiating proceedings. 148 Mich at 665-666. In *Koerber*, a petition seeking a local option on the liquor laws had been filed and the Court denied the requests of signers who submitted "withdrawal" cards to remove their names because they had changed their minds. 155 Mich at 683-684.<sup>3</sup> These decisions are all long standing and are based on reasoning that applies equally to petitions to amend the State Constitution.

Accordingly, in answer to your first question, a signer of a petition to amend the Constitution is not entitled to have his or her signature removed once the petition has been filed with the Secretary of State consistent with MCL 168.471.

Your second question is whether Michigan law recognizes any circumstances under which a signature on a petition may be "removed" by the Board of Canvassers from a petition – that is, not counted towards the requisite number of valid signatures – based on a claim of "fraudulent inducement" or "fraudulent misrepresentation." This question asks whether the Board of Canvassers may refuse to count as a valid signature, the signature of an individual who later complains that he was induced to sign a petition through a misrepresentation, presumably made by the circulator of the petition.

Analysis of this question begins with a review of the role of the State Board of Canvassers. As an administrative agency, the Board has no inherent power; it has only the authority vested in it by the Legislature in statutes or by the Constitution. *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 500; 688 NW2d 847 (2004). The Board is created by the Constitution. Const 1963, art 2, § 7. Its duties and responsibilities are established by law, MCL 168.22(2), and include the requirement that the Board shall "determine the result" of elections with respect to proposed amendments to the Constitution that have been submitted to the voters. MCL 168.841.

With respect to such elections, the Michigan Constitution provides:

Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. . . . Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. *The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and*

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<sup>3</sup> Accord, *Fischer*, 156 Mich at 2; *Kern v St. Clair County Bd of Supervisors*, 160 Mich 11; 124 NW 941 (1910); *Rutledge v Marquette County Bd of Supervisors*, 160 Mich 22; 124 NW 945 (1910). See also 1 OAG, 1957, No 3180, p 523 (December 2, 1957) (concluding that a signer of a petition to annex property under the Home Rule City Act, 1909 PA 279, could not withdraw his signature after the petition was filed but before any other official action was taken).

*sufficiency of the signatures on the petition*, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon. [Const 1963, art 12, § 2; emphasis added.]

The "person authorized by law" in art 12, § 2 is the Board of Canvassers. MCL 168.474. The Legislature implemented art 12, § 2, in part, in MCL 168.476, which gives the Board the authority to ascertain if the petitions have been signed by the "requisite number" of registered electors and to determine the "authenticity" of the signatures:

(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 may be used to determine the *validity* of petition signatures *by verifying the registration of signers*. 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. *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.

(2) The board of state canvassers may hold hearings upon any complaints filed or for any purpose considered necessary by the board to conduct investigations of the petitions. To conduct a hearing, the board may issue subpoenas and administer oaths. [MCL 168.476(1) and (2); emphasis added.]

Under MCL 168.477(1), the Board "shall make an official declaration of the sufficiency or insufficiency of a petition under this chapter at least 2 months before the election at which the proposal is to be submitted." The determination regarding the "sufficiency" of a petition includes whether the form of the petition complies with the technical requirements set forth in MCL 168.482.

In two recent cases, the Michigan Court of Appeals emphasized that the Board's authority and duties are limited. With respect to petitions to amend the Constitution, the Court in *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004), forcefully explained that the Board's duties include determination only as to the form of the petitions and whether there are sufficient signatures:

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. [Citations omitted.]

The Court reiterated the limited nature of the Board's authority in a second case involving a challenge to nominating petitions, *Deleeuw v State Bd of Canvassers*, stating that the Board "had no authority to consider any issues other than those identified in [the statute]." 263 Mich App at 501.

There is nothing in Const 1963, art 12, § 2 or MCL 168.476(1) that suggests the Board has the constitutional or statutory authority to examine claims of fraudulent inducement or misrepresentation, make a determination that such fraud occurred, and then determine that the petition has insufficient signatures on the basis of that finding. The Constitution only permits the Board to determine "the validity and sufficiency of the signatures on the petition," and the statute only authorizes the Board to determine whether "the petitions have been signed by the requisite number of qualified and registered electors" and to "determine the authenticity of the signatures or to verify the registrations." As in *Deleeuw v State Bd of Canvassers*, 263 Mich App at 501, there is "nothing in the statute that would permit the board to look behind the signatures to determine the motive of the individual signatories."<sup>4</sup>

To the extent MCL 168.476(1) permits the Board to reexamine "doubtful signatures" to determine their "authenticity," it only authorizes the Board – with the assistance of the clerk of the political subdivision – to verify the registration of signers or examine questions concerning forged or fraudulent signatures. In other words, it is limited to questions relating to fraud within the four corners of the petition itself.<sup>5</sup> But questions relating to allegations of fraudulent inducement or misrepresentation by petition circulators would require the Board to examine circumstances well outside the body of the petition and thus well outside of the questions of

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<sup>4</sup> The *Deleeuw* case construed the identical language of MCL 168.552(8) concerning nominating petitions for candidates for political office that gives the Board authority to "canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors." See also, *Citizens for the Protection of Marriage v Bd of State Canvassers*, 263 Mich App at 491, 493, where the Court, construing MCL 168.476(1), noted that two members of the Board voted not to approve certain ballot language because of speculation about how a court might ultimately interpret the merits of the proposed constitutional language. The Court held that considering the merits was error. Quoting from the transcript of the Board's open meeting, the Court noted that the Assistant Attorney General counseling the Board had advised against such speculation.

<sup>5</sup> In addition to forged signatures, other examples of this type of fraud would be irregularities in the circulator certificates.

validity and sufficiency of signatures to which the Board's authority is limited.<sup>6</sup> In the words quoted by the Court in *Garden City School Dist*, 358 Mich at 265:

"[E]very petition filed with this board would be subject to attack. . . . [T]his board would be burdened with the additional duties of ascertaining whether or not misrepresentations were made to signers of the petitions and whether or not misrepresentations were made to people requesting the withdrawal of their names from the petitions."

The absence of any express or implicit statutory duty to examine such circumstances is consistent with the fact that the Michigan Election Law imposes few constraints with respect to the substantive language of petitions and their circulation. Petition language is subject to limited regulations regarding font, type size, and the order of appearance of certain information. See MCL 168.482(1)-(5). Essentially, circulators are only required to attest to the fact that they are qualified to circulate the petition, and that the persons signing a petition were qualified to sign, and did in fact personally sign in the presence of the circulator. See MCL 168.482(6) and 168.544c(1).<sup>7</sup>

Research has disclosed no published Michigan court decision upholding the invalidation of petition signatures on the basis that the signatures were procured through misrepresentations by the circulators. In fact, in the only decision addressing this issue, the Supreme Court refused to invalidate signatures on this basis. *Burton Twp v Genesee County*, 369 Mich 180; 119 NW2d 548 (1963), involved a petition to annex property under the Home Rule City Act, MCL 117.1 *et seq.* One of the arguments before the Court was that "township residents who signed the petition were induced to do so by misrepresentations of the circulator, a Flint employee, as to the nature

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<sup>6</sup> Section 476(2), MCL 168.476(2), which authorizes the Board to hold a hearing and conduct an investigation, does not expand the Board's authority beyond the plain language of section 476(1), MCL 168.476(1). In other words, section 476(2) does not accord the Board blanket authority to hold a hearing or conduct an investigation on any issue. Rather, the hearing and investigation must be confined to the scope of the Board's authority to determine the validity and sufficiency of signatures.

<sup>7</sup> In contrast, see MCL 168.957 dealing with the circulation of recall petitions:

A person circulating a petition shall be a qualified and registered elector in the electoral district of the official sought to be recalled and shall attach thereto his certificate stating that he is a qualified and registered elector in the electoral district of the official sought to be recalled and shall state the city or the township wherein he resides and his post-office address; further, *that signatures appearing upon the petition were not obtained through fraud, deceit, or misrepresentation* and that he has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; that all signatures to the petition were affixed in his presence; and that to the best of his knowledge, information, and belief, the signers of the petition are qualified and registered electors and the signatures appearing thereon are the genuine signatures of the persons of whom they purport to be. [Emphasis added.]

of the petition." *Id.*, at 183. The Supreme Court concluded that the petition substantially complied with the technical requirements of the act and that there had been no concealment of the nature of the petition. *Id.*, at 187.

The Court in *Burton* considered the merits of the misrepresentation claim, but that decision is not dispositive of the issue presented here – whether the Board of Canvassers may invalidate signatures based on claims of fraudulent misrepresentation – because the authority of a court to review issues is not limited in the same way that the Board of Canvassers' authority is limited.<sup>8</sup> In addition, the decision did not involve the review of petitions to amend the Constitution, did not interpret Michigan Election Law, did not analyze the authority of the State Board of Canvassers, and did not address important fact questions, such as whether the purpose of a petition can ever be concealed if it is actually set forth on the petition and available for review by the signer.<sup>9</sup>

Accordingly, in answer to your second question, the State Board of Canvassers may not consider claims of fraudulent misrepresentation or fraudulent inducement in determining the validity and sufficiency of the signatures on petitions submitted to the Board in support of a proposed amendment to the Constitution because neither the Michigan Constitution nor Michigan laws expressly or implicitly grant the Board the authority to do so.

The remaining questions in your letter are based on the assumption that the Board of Canvassers does have authority to discount signatures based on claims of fraudulent inducement

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<sup>8</sup> *Burton* also has no bearing on your question because it did not address the threshold issue of whether the county clerk or the county board of supervisors had the authority to consider questions of fraudulent inducement or misrepresentation in determining the validity of annexation petitions filed under the Home Rule City Act. A review of that act as it existed at the time of the decision does not reveal any provisions expressly or implicitly authorizing these entities to do so. *Burton*, 369 Mich at 183-184. Had the Court engaged in such a review, it may have stated the case differently. For instance, in the older, yet analogous cases regarding whether a local-option liquor law petition signer had any right to withdraw his name from a petition based on a claim of fraud, the Supreme Court reviewed the pertinent statutes and concluded that neither the county clerk nor the board of supervisors had any authority under the law to go beyond the body of the petitions and examine extrinsic evidence relating to the claims of fraud. See *Kern*, 160 Mich at 13-17; *Rutledge*, 160 Mich at 25-27.

<sup>9</sup> In *Stierle v Lima Twp Bd*, 1996 Mich App LEXIS 666, unpublished opinion per curiam of the Court of Appeals, decided November 22, 1996 (Docket No 180169), which involved referenda petitions under the Planning, Housing, and Zoning Township Act, MCL 125.271 *et seq*, the majority reviewed the Supreme Court decision in *Burton* and concluded that "[t]he implication . . . is that fraudulent misrepresentations, which are not merely the circulator's opinion, may be sufficient to vitiate a petition if the purpose of the petition is concealed." (Emphasis added.) Thus, the majority in *Stierle* concluded that the plaintiffs had stated a claim upon which relief could be granted where they alleged that the purpose of the petition was concealed from some signers by misrepresentations made by the circulators. (Notably, the opinion does not reveal the nature of the misrepresentations.) Accordingly, the case was sent back for a trial to determine the extent of the fraud allegedly perpetrated by the circulators of the petitions. The dissent in *Stierle* chided the majority for relying on the "implication," and noted that "no reported Michigan decision, prior to today, has ever struck down a petition for such 'fraudulent inducement.'" As an unpublished decision, *Stierle* is not binding precedent. MCR 7.215(C). Moreover, it is unpersuasive with respect to the issues raised here since *Stierle* did not involve the interpretation of any of the relevant Michigan Election Law statutes or address the duties and authority of the State Board of Canvassers.

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or misrepresentation. Because this letter concludes that the Board does not have the authority to discount signatures on the basis of such claims, it is not necessary to answer the remaining questions.

If you have any questions, please give me a call.

Sincerely,

Gary P. Gordon  
Chief Deputy Attorney General