

Subject: Comment to April 25, 2016 Board of State Canvassers Meeting on Revised Proposal for Process to Rebut the Presumption of Staleness in Initiative/Constitutional Amendment Petition Signatures Over 180 Days Old [per e-mail dated 2016-04-22]

To: Board of State Canvassers c/o Bureau of Elections <elections@michigan.gov>

CC: Lydia Valles (MDOS) <VallesL@michigan.gov>

From: John Anthony La Pietra <jalp5dai@att.net>

Date: April 23, 2016

To the Board of State Canvassers:

Let me start by thanking you for your time and attention to this issue, and to this comment – and by reminding you of how I began my comment to you on this issue back in January: “Courts at every level have held that political petitioning is core political speech – for circulators and for signers – and should not be unduly overburdened.” I am glad to say that I believe the revised staleness-rebuttal procedure proposed by Board staff at the Bureau of Elections and released yesterday moves in the right direction – away from the excessive burdens on Constitutional rights posed by both the old policy and the Bureau’s initial December 14 draft revision, and towards taking some proper advantage of the state’s Qualified Voter File and other technological capabilities to make things easier for all concerned.

At least, the change is in the right direction *if* the sample Electronic Rebuttal Submission (ERS) sent with yesterday’s revised proposal is just a demonstration of the content and format envisioned for a single ERS from each person reviewing the rebuttability of presumed-stale signatures – and does not mean the Bureau wants the Board to require an ERS for each petition sheet with any signatures to be rebutted. The sample ERS looks to be laid out to cover only one sheet: it mentions petition lines #1 to #15 in order, as in a standard sheet. And it includes names associated with those lines whether or not they qualify for rebuttal – as some do not, since the persons are indicated as not registered to vote either on the date they signed the petition or during the 180 days before the petitions were turned in. However, this would not be true for any ERS which is consistent with the affidavit for reviewers included in the sample; the affidavit says the ERS will only include signatures that do qualify for rebuttal, from voters who were found to be registered at both times. I hope and expect that the proposal text controls over the sample ERS format – if not, any attempt at rebuttal will swamp petition sponsors, challengers, and the Bureau in wasted paper and time.

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Even if the new proposal only asks for one ERS per reviewer, it would still be overly burdensome due to its

requirement that reviewers file notarized affidavits. This is no more necessary for individual rebuttability reviewers than it is for out-of-state circulators of petitions. As those circulators do, individual reviewers could sign certificates that identify them with signatures they reviewed, commit them to accept jurisdiction and service if necessary, and so on. If some actual need for an affidavit in all cases is shown, as has not yet been done, one could be provided – by petition sponsors and/or by single entities overseeing reviewers.

There is also at least one significant omission from the proposal. My January 8 comment noted the Board’s choice between sampling and separation of petitions with signatures to be rebutted, and how petitions need only be separated if they are handled differently. Since this proposal does call for separating those sheets, it should also state that verified-as-rebutted signatures will be accepted unless individually challenged – and without being sampled, as I explained in step (2) of the process I suggested in that earlier comment:

[T]he Bureau would take its random sampling of signatures for validity by counting only the number of non-stale signatures on any petition when selecting the sample. Then the Bureau would add the sample-suggested number of valid non-stale signatures to the actual number of validated and not successfully challenged staleness-presumption-rebutted signatures, and compare that sum with the number required to place the petition’s issue on the ballot when making its recommendations to the Board.

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I again thank the Board – and the Bureau – for your willingness to pay attention to public input. I ask the Board to please heed the concerns I have expressed here, and amend the new staff proposal accordingly before adopting it. And I renew my call to the Board to allow petitioners to suggest, and the Bureau to explicitly authorize, any further alternatives which may be developed later and which provide equivalent safeguards for the roles and rights of all concerned parties.)

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NOTE: I am the Statewide Elections Co-ordinator of the Green Party of Michigan, and was GPMI’s 2014 Attorney General candidate. However, this is my personal comment and is not intended to be or reflect the view of the party or anybody else.