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Burzych Rhodes**

EXPERT COUNSEL



REAL SOLUTIONS

Election Law Briefing: *Local Ballot Initiatives*

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Disclaimer

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to a particular local ballot initiative project.
- Please contact an attorney if you need assistance related to a specific legal issue.



Election Law Underestimated

- Important and often overlooked
- Specific processes
- Historical practices may need revisiting
- Unique circumstances arise
- Election Law Briefings to explore topics



Local Ballot Initiatives



Local Ballot Initiatives

- Marihuana establishments
- Zoning ordinance amendments
- Township memorials
- Civil service systems
- Local police and fire civil service systems
- Township annual meetings and officer salaries
- Consolidation of township libraries
- Township water and sewage ordinances
- Incorporation as a charter township
- Various interlocal agreements
- Dissolution of economic development corporations
- Creation of housing commissions
- Issuance of bonds



First Step: Review Underlying Statute

- Separate statutes for each ballot initiative
- Scope of review
- Requirements
 - Signatures
 - Timelines
 - Eligibility
- Election Law reference



<i>Petition Type</i>	<i>Who Reviews?</i>	<i>Scope of Review</i>
Ordinance related to water supply and sewage disposal (MCL 41.350s).	A person or persons under oath.	Signatures verified by person under oath. Clerk determines number of signatures and has power to reject signatures and petitions “as city clerks possess by law.”
Incorporating as charter township (MCL 42.3).	Township clerk.	Township clerk checks signatures on petitions against registration cards and, if the number of required signatures is present, must perform all acts to bring the question to the ballot.
Creation of compensation committee (MCL 42.6a).	Township clerk.	Unspecified scope of review.
Zoning ordinance (MCL 125.3402).	Township clerk.	Determines that the petition is “adequate”.



Review Statutory Requirements

- Zoning Enabling Act example: referendum on ordinance (MCL 125.3402)
 - Notice of intent to file petition filed within 7 days of publication
 - 30 days after filing of notice to file petition
 - Registered electors
 - Not less than 15% of total vote cast in zoning jurisdiction for all candidates for governor
 - Filed with clerk
 - Clerk determines whether “adequate” or “inadequate”
 - Petition and election subject to the Election Law (general reference)



Review Statutory Requirements

- Michigan Regulation and Taxation of Marihuana Act example: initiate ordinance to prohibit or limit (MCL 333.27956(1))
 - Initiate an ordinance to prohibit or limit the number of marihuana establishments
 - Petition signed by qualified electors in the municipality
 - Greater than 5% of votes cast for governor at last election
 - Petitions subject to Michigan Election Law Sec. 488 (MCL 168.488)
- What about:
 - Where to file?
 - Timeframe?
 - Who reviews?
 - Basis to reject?



Election Law



Specific or General Applicability?

➤ General reference

- “A petition and an election under this section are subject to the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.” (MCL 125.3402)

➤ More common: specific reference

- “A petition under this subsection is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488.” (MCL 333.27956(1))

➤ Different requirements depending on the reference



Sec. 482

- General requirements
- Petition size (8 ½ x 14)
- Heading
- Summary of question in 12-point type
- Full text of amendment in 8-point type
- “We, the undersigned...” statement
- Warning statement in 12-point type
- Reference to Sec. 544c
- 12-point type statements regarding circulator

Sec. 544c

- Nominating petitions
- Elector signing information (printed name, signature, address, zip code, date of signing)
- Certificate of circulator and signature
- Warning statement in **12-point bold type**
- “Balance of petition” in 8-point type



Section 488 of the Election Law

- Applies to all local ballot initiatives when statute expressly refers to the section
- Applies limited requirements of Section 482
 - Petition size (8 ½ x 14)
 - “We the undersigned” statement
 - Warning statement in 12-point type
 - Application of 544c



Note about Section 482(4)

"We, the undersigned qualified and registered electors,
residents in the _____ congressional district
in the state of Michigan, respectively petition for (amendment to
constitution) (initiation of legislation) (referendum of
legislation) (other appropriate description).".



Petition Deficiencies



INSTRUCTIONS ON REVERSE SIDE

LOCAL PROPOSAL PETITION

- City
 - Township
 - Village of
- (CHECK ONE)

We, the undersigned qualified and registered electors, residents in the _____ in the County of _____, State of Michigan, respectively petition for:

If the petition circulator does not comply with all of the requirements of the Michigan election law for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted.

WARNING - A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

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CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she 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; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the City or Township listed in the heading of the petition, and the elector was qualified to sign the petition.

If the circulator is not a resident of Michigan, the circulator shall make a cross [X] or check mark [√] in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

WARNING - A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.

CIRCULATOR - Do not sign or date certificate until after circulating petition.

(Signature of Circulator) _____ (Date) ____/____/____

(Printed Name of Circulator) _____

(Complete Residence Address [Street and Number or Rural Route]) - [Do not enter a post office box] _____

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For non-Sec. 488 petitions: missing summary from Sec 482(3).

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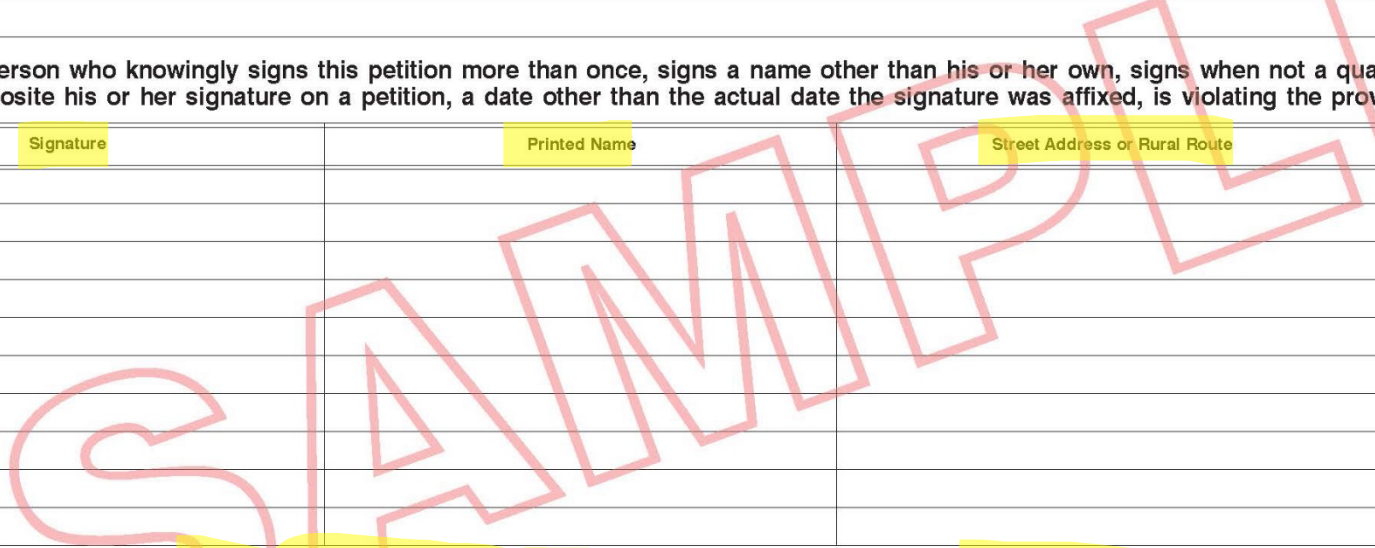
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Does it matter?



Previous Rule: Substantial Compliance

- Long line of Court of Appeals decisions
- Typeface size not as important as something more material like signatures
- Substantially complied with Election Law



2012: Death of Substantial Compliance

- *Stand Up v Sec of State*, 492 Mich 588 (2012)
- Does 14-point typeface size matter for heading? (required for state ballot initiatives)
- Requirements of Election Law for petitions are mandatory directives
- Legislature could have allowed substantial compliance, did not
- Strict compliance



Recommendations

- Review with counsel
 - Both submitted petitions and overall process
- Consider pre-circulation guidance
 - Cannot give legal assurance
 - Might not want a successful effort
- Post-denial guidance
 - Notice of deficiencies
 - Practical
- Risk analysis in approving legally deficient petition (even for minor things)



Questions?

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