

**Committee to Transform Michigan
P.O. Box 80978
Lansing, MI 48908-0978**

December 1, 2010

Terri Lynn Land, Secretary of State
Michigan Department of State
Lansing, MI 48918

Dear Ms. Land,

We are planning a petition drive next spring to eliminate the state Senate. We have been working with Brad Pittman at the Bureau of Elections for the last month or so and we think we've finally got our petition in a format that will be acceptable to the Board of State Canvassers. In the process, we found some of the requirements burdensome and unreasonable. We hope you agree and will change the guidelines. The guidelines are in the SOS document *Initiative and Referendum Petitions* at www.michigan.gov/documents/Ini-Ref-Pet_Website_77989_7.pdf.

1. Original text

We do not believe that the legislature intended that when an amendment alters existing sections of the Constitution, the amended sections be presented twice, first with the changes shown and a second time in their current form without the changes. MCL 168.482(3) says:

The full text of the amendment so proposed shall follow [the heading] and be printed in 8-point type. If the proposal would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted . . .

We believe the intent was that if the proposal was a new provision and would *not* alter or abrogate an existing provision, the full text of the amendment would be presented. But if the proposal would alter or abrogate an existing provision of the constitution, the original text would be presented with the changes shown. Here is our reasoning:

- Presenting the provisions to be amended as they currently exist has no value to the person considering signing the petition, since the original text is already presented within the amendment – new language CAPITALIZED, deleted language ~~struck through~~.
- Article XII, Section 2 of the Constitution says of amendment by petition, "Every petition shall include the full text of the proposed amendment . . . ," but says nothing about including the original text.
- The requirement that provisions to be amended be presented as they currently exist is inconsistent with the requirement regarding repealing legislation. With repeal, we are not required to present the text of the law that is being repealed, so the petition signer has no information at all about the law except for its title.

- The requirement is that the amendment be presented first, followed by the original text. Ordinarily when some sort of change is presented, the original item is shown first, followed by the changed item – “before and after”, not “after and before.”

2. Method of presenting changes

The document *Initiative and Referendum Petitions* offers a way to present changes to the Constitution:

If the petition offers a constitutional amendment which involves alterations to existing provisions of the State Constitution, the alterations may be presented by showing any language that would be added to the provision or provisions in capital letters and any language that would be deleted from the provision or provisions struck out with a line.

Although we agree that in most cases this is the best way to present changes, we find no specific method mentioned in the statutes. Indeed, even the SOS memorandum says “alterations **may** be presented” rather than “alterations **must** be presented.”

Our proposed amendment eliminating the Senate is a special case. In addition to the sections of the Constitution that address specific duties of the Senate, the Senate’s interaction with other areas of government, etc., there are many sections that refer to the legislature or legislators without saying anything specific to the duties of the Senate or senators. Here are some examples:

each house of the legislature
 either house of the legislature
 representative or senatorial district
 senate and house of representatives
 each senator and representative
 either house
 senators and representatives
 each house

We believe we can present this amendment on a petition with a one-sheet extension if we are allowed to specify some of the shorter and simpler alterations with the following table:

Phrase to be replaced	Replacement	Section
each house of the legislature	the legislature	Article II, Section 9; Article VI, Section 25
either house of the legislature	the legislature	Article III, Section 8; Article IV, Sections 7, 8 and 31
representative or senatorial district	representative district	Article IV, Section 4
senate and house of representatives	house of representatives	Article IV, Section 6
each senator and representative	each representative	Article IV, Section 7
either house	the legislature	Article IV, Section 11
senators and representatives	representatives	Article IV, Section 11
business, bill or joint resolution	business or bill	Article IV, Section 13
each house	the legislature	Article IV, Sections 14, 16, 18, 20, 26, 27, 29, 43, and 53;

		Article V, Section 2; Article VI, Section 1; Article IX, Sections 15 and 27; Article X, Section 5; Article XI, Section 5
of either house	(delete; no replacement)	Article IV, Section 18
in each house	(delete; no replacement)	Article IV, Section 18
each house of	(delete; no replacement)	Article IV, Section 30
that house	it	Article IV, Section 31
in both houses	(delete; no replacement)	Article V, Section 2
advice and consent of the senate	advice and consent of the legislature	Article V, Sections 3, 28 and 29; Article VIII, Section 6
senate or house of representatives	legislature	Article V, Section 13
in either house	(delete; no replacement)	Article V, Section 18
that house	the legislature	Article V, Section 18
Senate and in the House of Representatives	legislature	Article IX, Section 3

For this rather simple and straightforward amendment, this method of presentation would allow us to reduce the number of sections presented in their entirety from 52 to 18 and reduce the number of extension sheets from two (5 pages) to one (2 pages).

The people of Michigan are unlikely to have the opportunity to choose between a bicameral or unicameral legislature other than through initiative petition. Other attempts to put this question before the voters have failed, quite possibly because of the difficulty of putting such a huge quantity of text on the petition form. Technicalities should not be allowed to make this process any more difficult than it is. The Michigan Court of Appeal has held, in *Newsome v Bd of State Canvassers*, 69 Mich App 725, 729; 245 NW2d 374 (1976), that "[c]onstitutional and statutory initiative and referendum provisions should be liberally construed to effectuate their purposes, to facilitate rather than hamper the exercise by the people of these reserved rights." *Id.*, citing *Kuhn v Dep't of Treasury*, 384 Mich 378; 183 NW2d 796 (1971). And in *Settles v Detroit City Clerk*, 169 Mich App 797, 802-803; 427 NW2d 188 (1988), the Court of Appeals reaffirmed the general rule that "all doubts as to technical deficiencies or failure to comply with the exact letter of procedural requirements in petitions . . . are resolved in favor of permitting the people to vote and express a choice on any proposal subject to election."

3. Vertical heading

The SOS memorandum *Initiative and Referendum Petitions*, under Identification of Petition Type, says:

The following shall be printed in capital letters in 14-point boldface type on the left margin of the signature side of the sheet. (MCL 168.482(2))

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION
or
INITIATION OF LEGISLATION
or

REFERENDUM OF LEGISLATION
PROPOSED BY INITIATIVE PETITION

But that is not what MCL 168.482(2) says:

If the measure to be submitted proposes a constitutional amendment, initiation of legislation, or referendum of legislation, the heading of each part of the petition shall be prepared in the following form and printed in capital letters in 14-point boldfaced type:

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION
OR
INITIATION OF LEGISLATION
OR
REFERENDUM OF LEGISLATION
PROPOSED BY INITIATIVE PETITION

It does not say the heading shall be printed ***in the left margin*** of the signature side of the sheet. Headings are normally printed at the top of the page, and that option should be allowed. In fact, MCL 168.482(3), which immediately follows the above, says "The full text of the amendment so proposed shall follow and be printed in 8-point type . . ." If the amendment is going to "follow" the heading, it seems that it should be *under* the heading. And MCL 168.482(4) says "The following statement shall appear ***beneath*** the petition heading . . ." (emphasis added).

Our only problem with printing the heading in the left margin is that there is no easy way to do it with Microsoft Word.

4. Introduction

The instructions say that

The full text of a constitutional amendment shall appear at the top of the signature side of the petition sheet after an introduction which specifies the provision or provisions of the State Constitution which the proposal is designed to alter, eliminate or create.

We see no purpose in listing the article and section numbers the proposal is designed to alter, eliminate or create. Those numbers will appear in the presentation of the amendment itself. Listing them separately provides no useful information.

The instructions say that when there is too little room on the signature side of the petition and the amendment is presented on the back, "the introduction shall be followed by a brief synopsis of the proposal and reference shall be made to the reverse side of the sheet for the full text of the proposal." We agree that a synopsis is needed in this situation, but see no need for the "introduction". As an example, here is what appears at the top of our petition:

This proposed constitutional amendment eliminates the State Senate, leaving a unicameral legislature consisting of the House of Representatives. It also eliminates term limits for legislators.

This proposal, if adopted, would alter or eliminate the following sections of the Michigan Constitution of 1963: Article II, Section 9; Article III, Section 8; Article IV, Sections 1, 2, 4, 6- 8,

11-14, 16-22, 24, 26, 27, 29-31, 33, 37, 43, 53 and 54; Article V, Sections 2, 3, 6, 7, 13, 18, 20, 25, 26, 28 and 29; Article VI, Sections 1 and 25; Article VIII, Section 6; Article IX, Sections 3, 15 and 27; Article X, Section 5; Article XI, Sections 5 and 7; and Article XII, Sections 1 and 3.

The full text of this proposal is on the back of this sheet and its attached pages, followed by the current provisions of the State Constitution which would be altered or abrogated by this proposal. This proposal is to be voted on at the November 6, 2012 General Election.

6. Election Date

We find this requirement in neither the statute nor the instructions, but we were asked to say – after the introduction - when the proposal would be voted on:

This proposal is to be voted on at the November 6, 2012 General Election.

This statement is not critical, and the petition signer should not have to wade through any more verbiage than necessary. In addition, the date could be wrong. If the deadline for submission of petitions is missed, the proposal would be voted on at the next following election.

7. Printer's Affidavit

It is our understanding that the printer's affidavit requirement is Board policy. We find no mention of it in the statutes.

This policy may have made sense when the only way to prepare a petition was to have a commercial printer do it. Our petition was prepared on a notebook computer, using Microsoft Word, and printed with an inexpensive inkjet printer. We may use a commercial printer next spring, when we print thousands of copies for our circulators, but at this time we have no need for a commercial printer. To meet the affidavit requirement, we had to persuade a printer to measure our petition to make sure it is 8.5 x 14 inches, verify the font size used in several parts of the petition, and swear that to the best of his knowledge and belief the petition conforms to the petition form standards prescribed by Michigan election law and the Secretary of State – standards with which he probably wasn't really familiar. Not only that, but we had to pay a notary public to meet us at the printer's establishment and witness his signature.

Sincerely,

Steve Harry, Treasurer
Committee to Transform Michigan

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