

Legislative Analysis



STATE BOARD OF CANVASSERS: SUFFICIENCY OF BALLOT QUESTION PETITIONS

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House Bill 6138 (Substitute H-1)
Sponsor: Rep. Barb VanderVeen
Committee: Local Government and Urban Policy
First Analysis (11-8-04)

BRIEF SUMMARY: The bill would require the board of state canvassers to declare a ballot question petition sufficient unless it determined the petition's form was improper or its number of signatures inadequate. Board members could not consider the substance of the proposal when making their decision.

FISCAL IMPACT: There would be no fiscal impact to the state or to local units of government.

THE APPARENT PROBLEM:

On March 9, 2004, House Joint Resolution U—a proposed amendment to the state constitution to prohibit same-sex marriage—failed to pass the Michigan House of Representatives with the necessary two-thirds vote. A citizen initiative group then circulated petitions to put the question before the voters at the November 2, 2004 general election. Bypassing the legislature where the bill had failed, the group filed 475,000 signatures of registered voters with the Michigan Board of State Canvassers on July 5th—more than the 317,000 minimum needed—to place the proposed constitutional amendment banning same-sex marriage on the ballot (Subsequently, the ballot proposal was approved by the voters.)

When the four-member board of canvassers met on August 23rd to certify that the petitions had an adequate number of signatures from registered voters, its Republican and Democratic members deadlocked—voting two to two—the Republicans "yes" the Democrats "no". Those who voted "no" claimed the language of the proposal was unlawful and unconstitutional. There was no dispute that the form of the proposal had earlier been approved (although one member questioned whether that meeting complied with the Open Meetings Act), nor was there any dispute that there were a sufficient number of signatures in support of the proposal. The board's tie-vote denied the petitioners access to the ballot.

However, the board of canvassers met again on August 27th to consider the ballot language for the proposal, assuming the petitioners would ask the court of appeals to order the proposal certified. Under state statute, the language that appears on the ballot is drafted by the Director of Elections. The statement of purpose that appears on the ballot must be not more than 100 words. The law requires that the statement of purpose "consist of a true and impartial statement of the purpose of the amendment or question in such language as shall create no prejudice for or against the proposal."

With regard to the question, itself, the law requires that the question "be worded so as to apprise the voters of the subject matter of the proposal or issue." However, it "need not be legally precise." However, "the question must be clearly written using words that have a common everyday meaning to the general public." Further, "the language used cannot create a prejudice for or against the issue of proposal."

In this instance, the Director of Elections developed the following purpose and question:

A PROPOSAL TO AMEND THE STATE CONSTITUTION TO SPECIFY WHAT CAN BE RECOGNIZED AS A 'MARRIAGE OR SIMILAR UNION' FOR ANY PURPOSE:

The proposal would amend the state constitution to provide that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose."

Should this proposal be adopted?

Yes []

No []

When the board of canvassers met to consider the language of the proposal on August 27th, the board members deadlocked once again, voting two to two on whether to approve the ballot language proposed by the Director of Elections. The two board members who voted against the proposed ballot language expressed concern that the description of the proposal did not reflect the fact that it could be interpreted to prohibit the recognition of existing or future domestic partnerships between a man and a woman or between a same-sex couple, or to prohibit health insurers from providing a plan allowing for benefits to unmarried couples, either opposite sex or same-sex.

Because the board of canvassers was unable to come to an agreement, those who circulated the petitions—a group called Citizens for Protection of Marriage, or CPM—asked the Michigan Court of Appeals to order the board to certify their petitions and approve the proposed ballot language.

On September 3, 2004, the court of appeals ruled in favor of the petitioners, placing the proposal on the November 2nd general election ballot. The appeals court judges noted that objecting members of the board of canvassers "faulted the Director of Elections' proposed ballot language for not being sufficiently specific. However the board did not find that the... proposed ballot language was not true and impartial." The court ruled that "the proposed ballot language was clearly written using words that have a common, everyday meaning to the general public. Further, the...proposed ballot language created no prejudice for or against the proposal." As to unlawfulness and unconstitutionality, the court pointed out (as did legal counsel for the board of canvassers) that "any attempt to determine how courts might eventually apply the proposed amendment, assuming it won voter approval, would be entirely speculative."

The court of appeals also noted that the authority and duties of the board of canvassers as to proposed constitutional amendments is 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. "The board may not consider the lawfulness of the proposal, nor is a substantive challenge to the subject matter of the petition ripe for review until after the law is enacted," said the court.

The proposal appeared on the November 2nd general election ballot as Proposal 2 and was approved by voters.

Legislation has been introduced to prevent the Board of State Canvassers from considering the substance of any petition that is filed with the required number of certified signatures.

THE CONTENT OF THE BILL:

House Bill 6138 would amend the Michigan Election Law to specify that the board of state canvassers must declare a petition to put a question on the ballot to be sufficient, unless the board determined that the petition was not in proper form or that the number of valid signatures was less than the minimum number required. Further, the bill would prohibit the board of canvassers from considering the substance of the proposal affixed to the petition.

Currently under the law, the board of state canvassers makes an official declaration of the sufficiency or insufficiency of a petition at least two months before the election at which the proposal is to be submitted. If the canvassers declare the petition sufficient, the secretary of state sends copies of the proposal's statement of purpose to daily and weekly newspapers in the state, with the request that the proposal be given wide publicity. [The law specifies that publication about the proposals in response to the request would not be paid for by the state.] House Bill 6138 would retain these and other provisions.

MCL 168.477

ARGUMENTS:

For:

Under the law, the board of state canvassers has limited authority when it reviews referendum and initiative petitions. The board can only "make an official declaration of either the sufficiency or insufficiency of a petition." Generally, that is understood to mean the board can only certify whether an adequate number of registered voters has signed the petition in which they request that a question be placed before the electorate, and whether the summary of the question prepared by the Director of Elections is clear and impartial. Recently two members of the board of state canvassers exceeded their authority, questioning the substance of an initiative petition to ban same sex marriage. Because they opposed the substance (claiming the language was overly broad and would confuse voters), they voted against certifying the signatures of the registered voters,

causing a tie-vote which deadlocked the four-member board. This legislation is needed both to prohibit members of the board of canvassers from considering the substance of a petition, and to require them to declare the petition sufficient unless it is not in the proper form, or has an inadequate number of valid signatures.

Against:

Opponents of this legislation point-out that when the board of state canvassers rules on a proposal that will appear on the ballot, the form of that proposal falls within the board's purview. Consequently, the board members must offer a judgment as to the clarity of the question—that is, whether the proposal's language and summary will be clear and understandable to the voter. In this instance, for example, critics claim that the language of a proposed constitutional amendment was overly broad and confusing. They claim the vague language—both incomplete and misleading—could force universities, governments, and other public agencies to stop giving domestic partner health benefits to same-sex couples, as well as to unmarried heterosexual couples. Opponents of the legislation assert the members of the board of state canvassers should consider the merits of a proposal's purpose in all instances where a proposal's language will confuse voters.

POSITIONS:

The Secretary of State supports the bill as amended. (9-29-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.