



IMPACT OF FEDERAL COURT RULING ON PETITION DRIVE TO AMEND CIVIL RIGHTS LAW USING ONLINE E-SIGNATURES

On April 14, 2020, the Great Lakes Justice Center published a Fact Sheet reviewing Fair and Equal Michigan's (FEM) improper attempt to obtain e-signatures for its petition drive to amend the Elliott-Larsen Act. FEM must collect 340,047 valid signatures by May 27, 2020 in order to get its proposal on the statewide November 3rd ballot.

On April 13, 2020, without the approval of the Secretary of State, FEM unilaterally announced it will begin collecting petition signatures electronically on its website. The Secretary of State said it "hasn't determined yet if it can accept signatures collected electronically." FEM acknowledges that no prior ballot proposal has ever been permitted to obtain signatures electronically.

Some individuals are now improperly relying on a Federal Court decision issued today by District Judge Terrence G. Berg to support FEM's attempt to use e-signatures for its ballot initiative. However, Judge Berg's decision only applies to candidates for elective office who are attempting to obtain necessary petition signatures in order to get on the August 4, 2020, primary ballot. The judge repeatedly affirmed throughout his opinion that his ruling only applied to candidates attempting to get the required number of signatures necessary to qualify them to be placed on the primary ballot. The last line of his order specifically states that the order only applies to "offices for which nominating petitions are due as described in this order."

The order further requires the Director of Elections to promulgate regulations within 72 hours to allow electronic/digital signatures only for candidate petitions to get on the primary ballot. His court order specifically does not address the signature requirements and deadlines for ballot initiatives. Judge Berg made no finding or ruling on ballot initiative requirements.

As Attorney General Nessel has opined (2019 OAG 7310), all Michigan citizens have an interest in preventing unverified signatures that potentially result from "fraudulent practices or corruption." Electronic signatures may be appropriate for business contracts and other purposes, but Michigan law requires more protection in the ballot initiative petition signing process.

The Secretary of State holds no legal authority to enact any rules changing the signature requirements as applied to ballot initiatives under Michigan's election laws. Judge Berg's court order does not require such a rule. Only the Legislature has the authority to amend state statutes. When government officials improperly exercise power beyond that provided in law it violates principles of good governance and the Rule of Law.

The Great Lakes Justice Center again calls upon the Secretary of State to enforce existing state election law and deny FEM's request to permit electronic signatures.

GREAT LAKES JUSTICE CENTER

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