



**PETITION DRIVE TO AMEND CIVIL RIGHTS LAW
CANNOT LAWFULLY OBTAIN SIGNATURES ONLINE**

On January 7, 2020, Fair and Equal Michigan (FEM) launched a petition drive to initiate legislation banning discrimination based on sexual orientation and gender identity in Michigan. 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.

FEM is relying on another executive order permitting e-signatures in certain situations (EO 2020-41). Most of this EO deals with notarization of documents. However, Section 1 of the EO ostensibly relaxes statutory requirements for legal signatures and permits electronic signatures in certain circumstances.

1. PETITION MUST BE SIGNED IN CIRCULATOR’S PRESENCE: Beyond the signature itself, MCL 168.482a(5) adds the additional requirement that any signature obtained on FEM’s petition “that was not signed in the circulator’s presence is invalid and must not be counted.” FEM’s online signature process violates this requirement as the circulator (FEM employee) is not physically present with the signer of the petition when the petition is signed.

Michigan Attorney General Dana Nessel recently opined (2019 OAG 7310):

Subsection 5 of §482a invalidates a signature on a petition sheet if it was “not signed in the circulator’s presence[.]” ... [T]he “certificate of circulator” ... requires the circulator to certify specifically “that each signature on the petition was signed in his or her presence.” MCL 168.544c(1). ... The importance of requiring an elector to sign in the presence of the circulator

warrants little discussion. If a petition is signed outside the presence of the circulator, the circulator has no ability to affirm that the signature is in fact that of the person who purportedly signed the petition. The rejection of signatures proven to have been obtained outside the presence of the circulator is supported by the State’s substantial interest in protecting against fraudulent practices or corruption in the initiative and referendum process. ...

We agree that 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 petition signing process.

2. GOVERNOR WHITMER’S EO USURPS THE AUTHORITY OF THE LEGISLATURE:

The Governor holds no legal authority to enact an expansive executive order (EO 2020-41) changing the signature requirements in all state statutes, especially as applied to Michigan’s election laws. Declaring an emergency to deal with a public health crisis does not bestow control to the Governor over all Legislative enactments. EO 2020-42 (Par. 14) states, “Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority.” 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 calls upon Governor Whitmer to rewrite EO 2020-41 consistent with Michigan Constitutional and statutory law. We further call upon the Secretary of State to enforce state election law and deny FEM’s request to permit electronic signatures.

GREAT LAKES JUSTICE CENTER

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