

NAME

Select Committee on the State Board of Canvassers and the Bureau of Elections -
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DATE

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DURATION

3h 49m 30s

11 SPEAKERS

- Chair Mike Harris (R)
- Clerk
- Richard Houskamp
- Mary Ellen Gurewitz
- Rep. Mai Xiong (D)
- Rep. Jason Woolford (R)
- Rep. Ann Bollin (R)
- Vice Chair Denise Mentzer (D)
- Jonathan Brater
- Rep. Rachelle Smit (R)
- Eric Doster

START OF TRANSCRIPT

[00:03:30] Chair Mike Harris (R)

The House Select Committee on the Rules and Procedures of the State Board of Canvassers and the Bureau of Elections will come to order. Mr. clerk, will you please take attendance?

[00:03:38] Clerk

Chair. Harris here. Representatives. Posthumus. Here. Bollin. Here. Smit. Present. Woolford. Mentzer. Here. Xiong. Present. Mr. Cherry of seven members present a quorum.

[00:03:49] Chair Mike Harris (R)

Thank you, sir. And I need a motion to approve the minutes from the September 21st meeting. Representative Bollin makes that motion. Thank you. And without objection, so ordered. All right. Today we have an action packed, uh, probably lengthy committee, so I'll apologize in advance. Uh, appreciate everyone being here. Uh, we would like to start off by inviting, uh, Chair Richard House and vice chair Mary Ellen Gurwitz from the Board of Canvassers up to the table to present. Good morning. Thank you both for being here. I know it's a busy time of year for, I think, all of us here. Um, but we appreciate you kicking us off and, and with a lot of insight on, on the process and how this works. So I'll kick it off to you. And then, uh, if you're okay with it, we'll follow up with some Q&A.

[00:04:44] Clerk

Perfect.

[00:04:45] Chair Mike Harris (R)

Thank you.

[00:04:46] Richard Houskamp

Good morning, Mr. Chair. And members of the committee. Um, thank you for inviting Vice Chair Gurwitch and I to speak today. This is an important committee and. And the fact that you included us means a lot. Um. The board is a four member bipartisan body. In the ballot petition process, which is where I think we're focused this morning, the ballot petition process. Our responsibility is to determine whether a petition satisfies the applicable legal requirements, including whether it has enough signatures from qualified registered voters. And I would I would underscore that qualified registered voters, this is a part of the election process that's really critical. In our role, the Bureau of Elections performs a substantial work for us in examining petitions, reviewing signatures, evaluating challenges, and preparing recommendations.

[00:05:50] Richard Houskamp

That work is essential, but the responsibility for the determination of placement of the petitions on the ballot exclusively belongs to the board. That's an important part of our conversation this morning as well. The Bureau works for us. The board makes the decisions. Our job is to apply the law fairly, regardless of whether we personally support or oppose candidates or proposed initiatives. We perform that work within a legal framework and a procedural framework. And I'd like to walk through that for just a second. It's Michigan's constitution establishes the board and reserves important petition rights to the people. The people of Michigan have the right to put things on the ballot. The people of Michigan have the right to make those decisions. The legislature establishes requirements governing how those rights are exercised. Administrative rules and board procedures. Procedures that the board creates. Organize the review process. We also have court decisions that define the scope and the limits of our authority. Within that, each board member, all four of us exercise independent judgment. And work to apply skill, common sense, hopefully. And our understanding of the framework that we live in. Our judgments are bounded by law. We're not authorized to substitute policy preferences for legal requirements. But where our responsibilities require us to evaluate evidence and apply those requirements to particular facts, we try to do that work very thoughtfully and independently.

[00:07:50] Richard Houskamp

Most of the time with the most of the time with petitions, candidate or ballot initiative. Our work is fairly quiet. It's pretty straightforward. Things get interesting, though, when constitutional amendments and legislative ballot proposals get very loud and very large. It also gets interesting when the when the Bureau of Elections evaluates those petitions and comes back to us and says it's close. There's been a lot of a lot of discussion about maps. The Michigan out of money, out of Michigan politics. There's been a lot of discussion about the Americans for citizens voting. That's occupied your time. It's occupied ours. Um, both of those petitions were extremely close. They were. They were within a hair's breadth. One one was recommended to us by the Bureau to approve, and one was recommended that it had insufficient signatures. But that isn't really the argument here. It was it was close. And so when it came to us, we had a number of, of, of tasks to look at. I want to emphasize, just because the bureau makes a recommendation to us, just because they give us a staff report that says approve or disapprove, sufficient or insufficient as actual term. Just because they do that, that doesn't make the board's decision. In the case of these two petitions that we went through this summer, they were close and we went a little further.

[00:09:37] Richard Houskamp

We didn't just do a block. Let's listen to the lawyers and then make a decision. If you watch the tapes and I suspect you have, we took those challenges and we took the the rehabilitations and we took the staff report and we literally went line by line. Hours of walking through. And I emphasize that to you because I think it demonstrates that that that this board not only takes this extremely seriously, but if you listen to the tapes, we also operate independently. And in the case of these petitions, in the case of anything that comes with the board, three votes are needed to pass something. Three votes are needed to put a petition on the ballot. Three votes are needed to put a candidate on the ballot. In the case of Mops, three votes were there only three in the case of HCV, the board deadlocked. And please keep that in mind because that also is part of the process. That's part of the process that does the check and balance. In the case of HCV. I have a particular interest in the fact that there were 94 signatures that the Bureau of Elections reviewed against the qualified voter file, and they made a determination on 94 signatures out of 1000 sampled that those signatures were not valid. They didn't match the Cvr. Now that happens sometimes.

[00:11:24] Richard Houskamp

That's not a dark conspiracy. And it's not a it's not a problem with the system. It's the fact that you've all had petitions presented to you when you're walking out of the grocery store with bags full of groceries in your arms and the petitions. The signature gatherers is a passionate individual. And don't stop there. Your car is at the end of the line and it's raining, and they would like to talk to you about the importance of what they think needs to be on the ballot, and you sign it. Have you ever signed one of those? Do you really try to stop and say, hold that paper steady? Let me concentrate and write my name carefully. It's not like being at the Department of Motor Vehicles. So things happen and signatures get messy. The Bureau reviews those. We had 94 signatures that that that that they said were invalid. We looked at every one of those. We did the same thing with with money out of Michigan politics. Be honest with you. We did the same thing with um with a candidate by the name of Ralph rebrand. We've done that with many folks. In this particular case, there was a bit of a of a difference, though. There were 23 of those individuals who had had signatures called invalid, who filled out affidavits and had those affidavits notarized under the penalty of perjury.

[00:12:57] Richard Houskamp

And they said, no, wait a minute. That might not match your cvrf. But we did sign that that was us. We intended to, and that was our signature. In our discussions with the board, those those those signatures made a difference. Without those signatures, there was an insufficient number to get through with those signatures. A CV would be on the ballot now. Now, I know there's a lot of other arguments, and I know there's a lot of other folks, and you're going to hear from Mr. Doster later, and you're probably going to hear from vice? Vice Chair Gurwitch is certainly going to chime in in a minute. But but but I come to that one because that it wasn't a matter of, of, of a mutilated form and it wasn't a matter of somebody deciding was this date. Right. Wasn't a matter of deciding were you in your postal region? Um or did you follow the form. This was different to me. This represented the one thing that's even above the constitutional framework we have, and that is the voter, the individual qualified with a right to sign that. And so, so that's where I put the argument. In addition to that, we also had lots of discussion about things like form, um, partially damaged petition sheets, uh, jurisdictions. Those are all procedural.

[00:14:28] Richard Houskamp

Uh, we make judgment calls on those. There are times when Vice Chair Borowitz or Miss Cummings or Mr. Cortez will look at a sheet of paper and say, you know, there's an ink spot on that petition, but I can clearly see the letter E below it. There's times that I'll look at that and say, I don't see it. What happens when that comes around? Just like in the role you folks fill, we make our decisions. If three of us agree it, it goes. If three of us don't agree, it doesn't go. So. That's where I wanted to get you to today. And I know that the ACV, and I know that Mops, um, has really brought this conversation to, to a focal point. But I think the conversation we're having has to go way beyond that. The procedures we have are strong procedures and they work. Um, I never miss an opportunity to put in a comment for the Bureau of Elections. As you folks go forward, these are professional people. In the five years I've been on this board, they have done an outstanding job and they've done a job that is a neutral job. After five years, I can't tell you where any of them stand politically. And that says a lot. So that's mine. And I think Vice Chair Gurwitch probably wants to chat with you.

[00:16:00] Chair Mike Harris (R)

Please.

[00:16:00] Mary Ellen Gurewitz

Thank you. I share Chair Hoskins respect for the Bureau of Elections, and Chair Houskamp and I have served together, I think on the board. Maybe I might have been there a month before him, but we were each appointed to fill a partial term in 2022. Can you hear me? Okay. Okay. We were each appointed in 2022 to fill a partial term and then appointed to a four year term in 2023. And we have worked very well together. Um, and I, I have heard from people that they have seen the board function in a much more collegial way. Uh, under chair House Kemp and myself, um, than has been the case in the past. Um, you understand what our task is, and that is to make sure that they're to determine whether there is a sufficient number of valid signatures to support, whether it's a candidate or a ballot proposal. At the same standard is applicable. Um, and as Chair Kemp explained, the board of the Bureau of Elections works for us to do the initial and very extensive examination of petition signatures, whether it's a nominating petition or a ballot question. They make a recommend. They come up ultimately, um, with a staff report, but the work that they do is work that they do under our direction. So you have been furnished, I am sure, with the petition manual for statewide initiative, referendum and constitutional amendment petitions. That is one which the board reviews and approves, and we change it from time to time. The standards for determining validity of signatures is also.

[00:18:10] Mary Ellen Gurewitz

That standard is one that we also consider and approve, so that the the work that the board does, while not direct that the bureau. I'm sorry. Um, we keep doing that. We do it on our in our hearings and we. And I'm going to try not to do it here. The work that the Bureau does is essentially controlled by the standards, and the work that they do is directed by us. It's also directed. And this is a really important thing to note, particularly with regard to these recent petition drives. Um, the work is controlled by judicial decisions. And the one that is most difficult is a 2012 Michigan Supreme Court decision called Stand up for democracy. In that case, the court considered a really minuscule issue about whether about the size of a the typeface on the heading of a petition. And the court ultimately said that it is that these that that the Bureau and the board must strictly apply the language of the statute in determining validity. So strict compliance is one that has required us over the course of the time that I've been on the the board to make decisions which seem kind of, um, harsh, um, possibly even irrational. But the application of the stand up for democracy. Democracy decision has governed, um, decisions that we make about the validity of signatures and the validity of petition sheets. Generally, we didn't like that, that standard, um, we worked in 2023, um, uh, chair House Kemp and I convened a group of people, many people we. We met with practitioners to determine whether there were things that we should be doing differently.

[00:20:36] Mary Ellen Gurewitz

Um, and many people worked then on, uh, in the election, um, committees to consider legislative changes. One of the ones that we supported was to change the standard from strict compliance to substantial compliance. Um, and, um, we were quite surprised when the governor and that was incorporated into the bill and the governor vetoed it. Um, we were, we had worked hard on that and we were pretty dumbfounded to be frank, but we are still applying the strict compliance rule to determine the validity of signatures. Um. We, uh, one other there's another judicial decision, which I would like to mention. Um, and that is a recent one, Nielsen versus Board of State Canvassers, which is a 2024 decision. The issue that came up in in the citizen voting case was not new. Um, we often have efforts to rehabilitate signatures with regard to nominating petitions. And obviously we deal with nominating petitions far more often than we deal with ballot questions. Uh, and we have, um, potential candidates whose ability to get on the ballot is our responsibility. Uh, and we have, um, we have candidates coming like, a. Reprint saying, oh, I'm close, you know, just a few. And close doesn't cut it because you have to have a sufficient number of valid signatures. Um, so Nielsen was a case of a person seeking to be on the ballot for a court of appeals position. Um, and we, we were so busy that we had to put off, um, from the end of the day, Friday to the next Monday, the final consideration of her petition.

[00:22:54] Mary Ellen Gurewitz

And we, the, the bureau said to her and to her, I think she had four attorneys, uh, uh, said that she could submit any additional evidence by Saturday, but no later. Uh, we convened again on, on Monday. Um, and her attorneys came in with more affidavits and wanted wanted the board to accept them. And we didn't because we had said, you have to have it all in. We're not going to just keep doing this, you know, and having you submit evidence until you can convince us that you have made it. Uh, that case went to the Court of Appeals, um, where there was an extensive decision approving the board's position, uh, that they could cut off the time for submission of and consideration of evidence. Um, it was precisely the same issue that we faced with regard to ACV. So subsequent to that decision, we adopted a rule. It had been, um, an unwritten rule prior to, to, uh, to the Nielson case, we adopted a rule that no, no further evidence could be submitted, um, later than 48 hours before a hearing. And that is the rule that we applied with regard to the citizen voting petition. Um, as chair Huskamp has just told you, um he didn't want to apply that rule. Um, but um but we did, uh, he, I'm an attorney. He's not, I'm more hung up on procedure and rules. Uh, but, you know, we disagreed on that.

[00:24:50] Mary Ellen Gurewitz

Um, and ultimately it was, um, it was a determinative. I'm not so sure it was determinative decision because we were very close on a number of things. But, um, but that was a rule which we had adopted, um, in accordance with all of the procedures for rural adoption. Mr. Doster, who was representing the petition sponsor, understood that was the rule, said it wasn't applicable to him for for no good reason. But, um, but that was the rule that we applied. And we also, as I said, um, apply the standards for judging the validity of signatures. Um, we apply the rule, set forth the requirements set forth and stand up for democracy, as does the, the bureau. So we, this was close. Um, and we, you know, we only convene ultimately after the staff report is issued. But in this instance, we, I went, I know that, um, that, uh, member Cummings went, um, chair house Kemp went to the Bureau of Elections and looked at signatures ourselves and looked at what the. What conclusions had been drawn by the Bureau of Elections folks who. Who work really hard and it is hard to make those signature comparisons, but they attempt as chair or as director Brater will tell you to, to do it as carefully and consistently as they can. Um, so I think, um, you know, I'm satisfied that we applied, um, the rules consistently and fairly. I knew it. Know it looked, you know, obviously it looked strange. It, it looked, I don't know, suspicious is the right word. But people's people were certainly concerned that a progressive proposal, if that's what we want to call my pop was passed and that a very conservative proposal was not passed.

[00:27:14] Mary Ellen Gurewitz

They were each very close. Uh, chair House Kemp said to you that, uh, that the my map petition passed with with three votes. Actually, it was interesting because we had four uh, we concluded all four of us that there were a sufficient number of signatures, but member Cordis said he was not going to vote, uh, to find it sufficient because he said it was a sloppy petition, which is not a standard that we apply. Um, certainly the, the citizen voting petition was also an amazingly sloppy petition. Uh, with, with a huge number of invalid signatures. I think that going into this, this isn't exactly a legal issue, but people knew it was well known that that my mom was having trouble getting sufficient signatures. Um, and they came in at the very last opportunity. Citizen voting came in early and filed a large number of signatures. I think the anticipation was that my mom might not make it. And that citizen voting surely would that that was something before we looked at anything, um, that I thought was going to happen. It didn't because when the staff reports came to us, my mom was a little over and citizen voting was a little under. Um, so that is, I, as I said, I am satisfied that we fulfilled our responsibility to evaluate those petitions and the signatures supporting them. So, you know, certainly I welcome questions.

[00:29:08] Chair Mike Harris (R)

Great. Well, thank you both. Um, I think again, it was a great kick off to the hearing, but I know vice Chair, you, uh, you elaborated a little bit more on the 48 hour rule. So being chair, I think I, I want to go first on questions, but, um, let's focus on that 48 hour rule because I'd love to make sure that we just, we understand it. So rule promulgation. Is that something that the board handles. Rule promulgation? Is that something that the Bureau does. Who has that authority.

[00:29:47] Mary Ellen Gurewitz

The the board asks the bureau to to do the um to engage in the rulemaking procedure, which is complicated. Um, you know, so a lot of steps have to be followed. The, the rule has to be put up for comment. Um which happened. So it was the board's initiation, um of the rule making procedure which the bureau then followed. And the rule was adopted in 2025. Um it was effective May 12th, 2025. Um and it was rule 168.846 submitting material to the board.

[00:30:28] Chair Mike Harris (R)

All right. Thank you. What was um, and just because I know we have a lot of people tuning in that may not have some of the same documents that we're looking at and whatnot. Can you explain, um, what was the original intention or how is it spelled out in that rule who this is supposed to apply to?

[00:30:48] Mary Ellen Gurewitz

It applies explicitly. It says to members of the public, okay.

[00:30:52] Chair Mike Harris (R)

Does that involve when you say members of the public, what's the interpretation there is that the people that are before you in a hearing is that the general populace coming in and wanting to participate. Um, is that people that have signed a petition.

[00:31:07] Mary Ellen Gurewitz

It's the general public. Okay. And that would of course include the petition sponsors, the petition challengers, anybody who is before us and arguing the rule is applicable to challengers as well as to sponsors. I think that you're familiar. And director Brater will talk more about the the, you know, the detailed procedure. Um, but after after the petitions are submitted and reviewed, um, we now use a sampling procedure, which I would actually, I meant to address that and I will, um, when the petitions, um, when a sample is taken, the sample is public and challengers have the opportunity to argue about why petition signatures are valid or invalid, and the petition sponsor has the opportunity, of course, to respond as well. And and the arguments of the challengers and the sponsors are what what the board considers when it's making a final decision. Um, the, the sampling procedure is one that the board approves as, as it approves the rules. So in 2023, uh, the board, as I mentioned, convened, uh, we convened a meeting of practitioners and then other people considered other, um, committees and folks with an interest in this considered how procedures should change. Um, at that point we had been faced with, I'm sure you all remember, um, a lot of petitions for a lot of nominating petitions which contain substantial fraud. And we decided at that time, um, after, after securing um, opinion, an opinion from a firm, not an opinion, a recommendation and a review of the procedures, we decided to apply a sampling procedure to nominating petitions for statewide candidates who have to have upwards of, you know, at least 15,000 signatures.

[00:33:31] Mary Ellen Gurewitz

We recognized that we did. We did not have the ability to adequately examine those without the sampling procedure. The sampling procedure has been in effect for decades. It's the only way that we currently have of, of evaluating the the signatures that come before us. Um, so we and we changed the sampling procedure for ballot questions. Uh, there had been um, the opportunity, at least for a two stage procedure. This time we decided that we would use the sampling procedure, drawing a sample of 1000 signatures to give us a sufficient degree of confidence that those signatures were representative of the larger universe. So that was, um, that was something that we had done. And we will look at our procedures. Whoever's on the board chair Huelskamp and I are our terms are expiring, but whoever is on the board then next year will, I'm sure, look again at our procedures and I hope we'll look, um, we have talked extensively about, um, about our, um, our hope, our intention to be able to use um, AI more effectively to review signatures and to to further examine, as we have done in the past, what other states are doing with regard to ballot questions, there are quite a few states that have the initiative process. Some states have large numbers of initiatives and. And we want to know how they manage what is for us a very time consuming and difficult procedure.

[00:35:21] Chair Mike Harris (R)

Thank you, Mr. Olson.

[00:35:22] Mary Ellen Gurewitz

One other. There's always one more. Uh, had had, uh, substantial rather than strict compliance been in effect. I'm quite confident that this petition would be on the ballot. Uh, and we wouldn't have had so much difficulty with my map, either. It's not that substantial. Compliance is easy either. We would be, you know, did this person mean a five or an eight? Um, but you would. Chances are you'd know the person meant A5 because you know, this is a petition that was circulated in 2025. So I think that's something that's worth considering. It's something that we talked about. Um, it's something that we acknowledged when we were considering this. Um, but we recognized what, what the Michigan Supreme Court said our responsibility was.

[00:36:17] Chair Mike Harris (R)

All right.

[00:36:18] Richard Houskamp

I'd like to go back to the 48 hour rule for a second. Um, as as vice Chair Gore has told you, both her and I were involved in establishing that rule and in fact, determining the need for that rule. And it did involve Nielsen and to to some degree, and I know this is a really formal committee, but to some degree, that was a merciful thing. We did the pattern that Mr. Nielsen was doing to get Lisa Marie on the ballot of coming to us and not having enough and then coming to us again and not having enough. And it was a repeating pattern. And if you carried it out, it carried that pattern out. He would have still been coming to us in January after the election, and she would have missed it completely. The, the, the issue we tried to solve was not an issue of a voter who said, you made a mistake. Michigan on my signature, I'm willing to sign an affidavit. The rule that we set out was really designed to keep people from gaming the system. I my words, um, and, and the other point here, when we talk about substantial compliance, strict compliance, I like to keep that focused on things like forms and form and who's signing the petition and where did they come from? And are they in the right county and are the pieces filled out? To me, an administrative rule is a little bit different.

[00:37:45] Richard Houskamp

To me, it's a little more like the velvet rope over at the Celebration Cinema. It's simply not. It's it's it's it's a rock, paper, scissors argument and an administrative procedure. An administrative rule is very important. And we do try to follow them. But but I think that there are also things that are that are more substantive than administrative rule. And when it comes up against when it comes up against a voter's testimony, the administrative rule to me takes second place. And, and, and, and by the way, we if we have had multiple meetings where we have had petitioners and we have had challengers who have come to us and made presentations. Mr. Doster speaking to you this morning, he's done this himself. He's come to us and said, you know, I've got this document I want to give you. It supports my case, and if you watch our tapes, you'll find that it's very frequently people come through and put documents in front of us.

[00:38:49] Richard Houskamp

And by the way, even on that level, you will also see sometimes we will take the document and say, yeah, that's great, thanks for delivering that, but we aren't going to consider it. And there are other times that we come back and we say, yeah, Mr. Brady did that during the Mops. And we say, okay, we will take this exhibit that you just gave us and we will lay it alongside of the testimony you're about to give. And sometimes we say that outright, and sometimes we say that subtly and sometimes sometimes Vice Chair Gurwitz will take that document, and she will look at it alongside of the testimony, and I will take that document and set it aside and not pay any attention. That, too, is part of the discretion of the board members. And I keep beating on that because I think that's that's that's important to this conversation. And um, yeah, we've, the rules are important, but, but the administrative rules that, that to me doesn't come underneath the substantial versus strict compliance, strict compliance to administrative rules, I think would put the board into a role that nobody in Michigan wants to see. So just my opinion.

[00:40:05] Chair Mike Harris (R)

Thank you for that. And it's um, and again, I want to go back and focus, continue focusing on the 48 hour rule. If if you guys would entertain me for a moment. So obviously I, and I think you've both brought it up, both of these ballot initiatives really kind of brought to light the concern as to whether or not, whether it's is the procedure, right, whether the procedure is being followed correctly. Um, are there changes that were made that have now caused these things to be so close? And I think it just it, this committee is formed to really have the oversight of that and look and make sure we're evaluating to put the importance on the voter. And I'm sure if you've watched prior committees, you've heard me say, I truly believe there is no more important thing than citizens being able to petition their government for change. I truly think we have to put that on a very high pedestal and put a lot of importance on that. So I think government, looking internally at itself and making sure that is as we're giving the proper way to that, I think that's the main focus of this committee. Um, so again, I appreciate you guys helping us sort through what that looks like and what it's actually like boots on the ground running these types of things. So, so with the 48 hour rule, obviously we have a ballot initiative that passed one that didn't close margins was that 48 hour rule. Um, the exact same on both petitions. And I mean, did the board operate within that self-imposed rule and treated both initiatives exactly the same? As far as that, we didn't allow any new information to come in after 48 hours or within that 48 hour window on both. Or was there, you know, exceptions to that at the time?

[00:42:01] Mary Ellen Gurewitz

I think we applied it consistently. Uh, member House Kemp just suggested that, that we let something in from the petition sponsor. What happened? And this is a change that I think we need to make. I don't think, um, I don't think that that it's a legislative change. Um, when the board issued the staff report in the petition, they said that because they had concluded, um, even after reviewing all of the challenges, because they had concluded that there was an insufficient number of signatures. Um. Excuse me. A sufficient number of signatures. They were not going to consider, um, the additional rebuttal from the petition sponsor. So Brady, um, Michael Brady, who was representing the sponsor had submitted this, uh, additional information, which the board said the bureau said it was not going to consider, um, when the hearing was held, um, both the sponsor, the sponsor's attorney and the challenger sat side by side and went through. This is the challenge. This is the rebuttal. It wasn't, it was a consideration of the rebuttal, which, um, which we thought was essential Because of the posture that the case was in that the matter was in when it came to us, and because of the Bureau's determination that it didn't need to consider the rebuttal, we thought the rebuttal was necessary. And so one of the things that we have said to the to the Bureau is that that we have to consider the rebuttal, even if the determination appears to be dispositive.

[00:44:08] Mary Ellen Gurewitz

So that is one change that we would be making. There's another change that we're making. And it is something, um, which is interesting with regard to why each of these was close. Um, there is a rule regarding duplicate signatures, which is a pretty Irrational rule, but it has come down to us from a sometimes irrational court. Um, that if there are duplicate signatures, neither of them counts. Um, the. Our procedure, which we have been applying up to now, the bureau's does not. Um give them the, the, the ability to identify duplicates. What we learned, particularly with these two ballot proposals, was that there are vendors out there. Each of the challengers retained the services of a vendor who was able to identify identify duplicates. And so there was a huge number of duplicates, um, in the sample. And that made a big difference from when the bureau reached its initial conclusion and then reached its conclusion modified by the challengers. There were a lot more invalid signatures. And so another thing that we're saying to ourselves is that if some of these challengers are using, if there is a program out there, a vendor who who can identify duplicates, then we ought to be retaining the services of that vendor. The challengers ought not to have abilities that we don't have. Um, so that's just that. That's another reason I think that this was closer than it had originally appeared.

[00:46:12] Mary Ellen Gurewitz

The challengers are doing a better job. Um, and that's, you know, both, both sides, they're identifying more signatures that, that are not valid for, for whatever reason, whether, they're duplicates or, you know, something else. So, and I do think I saw on our, um, the board of canvassers website, which I was looking at again, um, that we have a document which shows what the validity rate has been, um on ballot proposals over the many decades. The validity rate on each of these was, uh, was low, very, very low even before the, you know, before the examination. Um, I think one of the reasons that they're close, um, is because the percent, the number of signatures that, that are now required is much higher since it depends on the, on the vote cast for governor in a previous election. So, um, it's a lot harder. And we see that a lot of petition drives, um, Have failed so that there were a lot of petition drives we review. Petition language before the petitions get circulated and we determine the 100 word summary, or we have the ability to do so if a petitioner wants to do that. So there were a lot of petition drives out there. Um, and most of them didn't ultimately come to us with even, you know, nearly enough signatures or just enough signatures.

[00:48:02] Chair Mike Harris (R)

Just for time constraints. Cherry. I want to make sure that you can get a comment on too, but I know Mr. Brater, I think has a hard stop at some point. So we'd like to make sure that we're giving him the time that he needs to. So, Mr. Chair, if you want.

[00:48:15] Richard Houskamp

I would like to just point out one one item and forgive me if you folks already know this, but we talk about things like petitioners and challengers and public. Not all things are created equal here. And so I want to call your attention to the fact that when we talk, even in the 48 hour rule, when you're talking about a challenger, that's a little bit different. A challenger has a defined window that they can challenge a petition, whether it's on a signature, whether it's on an MRR form, whether it's on anything. A challenger has a defined and and that's really critical here. A petitioner is not under under those rules. Now, you were given a memo by you were sent a memo by Director Brater. And I know so I know you have this, but I'm just going to reference it for you. Um, and it's actually on page three and it's item number ten. And I'll make it really brief and then I'll stop, um, challenge period. Once the sample is released, the ten day business ten business day challenge period begins. Challenges are limited to the sampled petitions only. And the types of challenges are fully described in the boards manuals.

[00:49:26] Richard Houskamp

The regulatory division sends the challenge to the sponsors of the petition, who are provided with an opportunity to respond and rebut the challenges and provide additional evidence. Unlike the challenge deadline, there is not an established written deadline for rebuttals, but staff must receive rebuttals in time to review them and incorporate them into their findings for the staff report. The 48 hour rule was also kind of on the tail end of that. The reason we justified the 48 hour rule was because there are things that are presented to us that we can't take. Prima facie, they have to be looked at. And again, I go back to my my opinion on the ACV was, is that a notarized testimony is pretty, pretty substantial. But but please keep in mind that the challengers have a different set of rules, right? Deadlines. Um, you can't come in at the end and say, oh, by the way, I, I think these five signatures are not real. Or by the way, um, here's a form that I just spotted this mark on you even outside of the 48 hour rule. Can't do that outside the challenge window.

[00:50:38] Chair Mike Harris (R)

So thank you for that. Thank you. Um, was there a case in one of these ballot initiatives where a notary was allowed to come in and testify within that 48 hour window to verify their signature? Yeah. So how do we allow it now? How do we. Hold on. Let me let me ask the question. How do we allow a notary to come in and verify their signature? But we don't allow a person filing an affidavit that was a duly sworn elector to come in and say, that is my signature. Within that 48 hour rule.

[00:51:12] Mary Ellen Gurewitz

The affidavit had been submitted within the 48 hour period. Um, and I thought. And and there was a question about the the validity of the notarization because it was not on the same page. The notaries, um, Jurat was not on the same page as the signature. It's picky, but this is all picky, right? Um, I thought, and I did not think, I believe that we went 3 to 1 on that one. Actually, I did not think um, that having the notary say yes I did. Do I, you know, I did see it. Um I didn't think that, that we should allow that um the other three uh um canvassers voted yes on that. We, you know, we went through one by one by one. Um and we agreed on some and disagreed on some. And it wasn't just Republicans versus Systems, um where um, you know, there were some uh, 3 to 1, um some 2 to 2.

[00:52:28] Chair Mike Harris (R)

Which ballot initiative was that one on? I don't recall that that was a, that was a CV with the notary issue.

[00:52:34] Mary Ellen Gurewitz

Right.

[00:52:35] Chair Mike Harris (R)

Thank you.

[00:52:35] Mary Ellen Gurewitz

Because that was the attempt to rehabilitate signatures, which was not um, not an issue. Rehabilitation of signatures was not an issue. Um in, in the my map case. Okay. If I recall correctly.

[00:52:56] Chair Mike Harris (R)

All right. Anything else you wanted to add to that? No. Okay. Thank you. Um, I have a million more questions, but I want to be fair and and share the time here. Uh, representative song.

[00:53:07] Rep. Mai Xiong (D)

Thank you so much, chair. Thank you, Mr. House Kemp and Miss Gurwitch for being here today. I really appreciate your testimony and taking the time to come and testify and help share with us the importance of your job. And I appreciate you mentioning that this is an independent board, and I hope that coming before us doesn't change that, because we truly believe that you have such an important role that acting independently is very important process. Part of that my question is, um, and you mentioned, you know, strict compliance compliance and substantial compliance, um, in preventing the repeating patterns or gaming the system as you mentioned. So wouldn't you agree that strict compliance would eliminate all of that?

[00:53:55] Richard Houskamp

No, I think strict compliance actually, I think creates some interesting, um, some interesting problems. And I'm going to give you one. It's my favorite one. It happened the first month I was on the board. It was in it was in 22. And we had a pastor who wanted to run for state Senate. He was a pastor from Detroit, and he went out and he got the signatures. He did it by enlisting people in his congregation who were happy to help him. It wasn't a very wealthy church. It was a very poor church. And they had a really bad copier. And what happened was, is that they were almost there. They almost had the signatures they needed like two more sheets, and somebody made a copy and they copied on the copier and the bottom. You know how sometimes copiers will chop things off? On the bottom of the petition form is a really, really tiny little line required by form required under strict compliance. That line has important information. It gives you things like the copyright date of that form. It's technical. Has absolutely nothing to do with the validity of that form. However, in in form, in our forms it's important. And there were two sheets that that had gotten muddled on, not eliminated, simply muddled. You couldn't read them. We denied that pastor a place on the ballot, and we negated all of those voters who signed. That's an example of what substantial compliance would have kept from happening. And sometimes, by the way, when we use substantial, I would suggest we use a different word. I'd suggest we use common sense. Common sense and substantial aren't the same, but common sense is what would have carried that through. And so when you guys consider that in the legislature, that was probably the most important piece of that legislation that was vetoed, that I think that the people of Michigan lost out on.

[00:56:06] Rep. Mai Xiong (D)

Thank you. Thank you, chair.

[00:56:07] Chair Mike Harris (R)

You're welcome. Uh, rep Woolford.

[00:56:10] Rep. Jason Woolford (R)

Thank you, Mr. Chair. Thank you for being here, both of you, today. Um. I'm thankful for both of you because it seems like you are in a position that, uh, you know, seems to be a system set up in ways to, to deny instead of approve things. And I hope that through this committee and, and some things change in that, uh, the reason I say is we had nearly a million people, 700 and some thousand people. We the people sign a petition to put something on the ballot. And ma'am, you mentioned earlier being a lawyer, and it made me think about it. Uh, you know, in cases and I'm no, no lawyer, uh, but, uh, it seems like we'd want to look at all of the evidence, uh, when we're looking at a case or making a decision. And in this, this scenario, we're looking at 0.13% of those. We have 700 and some thousand that come in. We look at 1000. That comes down to 600 and it doesn't get approved by three. So um I have concerns about that. So my question to you is what concerns do you have about sample sizes for these larger petitions. And what can we do to make this process more fair. Because I mean, at the end of the day, um, you know, they say the smell test, this sure does not pass that. Thank you.

[00:57:44] Richard Houskamp

Did you want to take that one or do you want me to.

[00:57:45] Mary Ellen Gurewitz

That's yours.

[00:57:46] Richard Houskamp

That's mine. Um.

[00:57:48] Mary Ellen Gurewitz

I'm the lawyer, but he's the tech guy. And so he has been for for ever since I've known him on the board urging that we, um, that we incorporate, um, artificial intelligence into our evaluation of Petitions, and I hope we can do that.

[00:58:08] Rep. Jason Woolford (R)

Yeah, well, the sake of fairness, I mean, obviously we have representation on both sides. I'd love to hear from both of you on those questions. Thank you.

[00:58:14] Richard Houskamp

Representative Woolford we could go on for the rest of this week on this subject. I'll keep it really short. The question you're asking is a totally valid question. Let's pretend we're in a perfect world. All 709,000 signatures would be individually validated. That's really where you're headed. It's not humanly possible. It truly isn't. But but but it is possible with technology that a huge chunk of those signatures could be evaluated. And the way that an AI program would work is when the signatures are, when the sheets are, are, are submitted. And they're, and they're, they're, they're, they're scanned in, in the process of scanning it, the program would simply catch all those, all of those, it would evaluate form right there. It would evaluate form instantaneously. It would also look at every signature on that page, and it would have a back door to the UVF file. The application of software I'm describing would be an employee of the bureau to protect the UVF, and it would look at the UVF file and it would evaluate that signature, and it would evaluate the address and the voter, and it would have all that information. Now does that eliminate the human? No, no. We still have a thing that we have to work on there. What it would get to is, is at the end of the day after that run was finished, and that run could be done in literally a day.

[00:59:34] Richard Houskamp

You could process massive, massive petitions in less than a week when that run was finished. It doesn't simply say to you, yes, this passes or no, that doesn't. That's our job. And it doesn't even say, yeah, okay, all these signatures are good or all these signatures are bad. That's the bureau's job. What it does is it comes back and it says, we have, we have we have one here from a Mike Harris. And this one, this particular one from Mike Harris. Looks like it only has a 50% certainty rate. Ai does things with percentages. And so it would come back and it would say out of 709,000 signatures, for example, here's 5000 signatures that bear looking at. Or here's 2000 or here's 20. And what it's going to do is it's going to preprocess all of that. And so the human and the human initiative comes down to not wasting time on things we know are valid. But it comes down to saying, hey, here's a stack of signatures that just doesn't work. Will it catch fraud? Oh yeah. The round the round tabling that that that was seen in the in the gubernatorial in 22. Ai would have caught all of that. Michigan. And by the way, to clarify to the I checked before before this committee meeting as of last week, there are no states using Ai for what we're talking about. Michigan could be the first. So.

[01:01:09] Rep. Jason Woolford (R)

So there's.

[01:01:10] Richard Houskamp

If you'd like to.

[01:01:11] Rep. Jason Woolford (R)

Talk about room for improvement.

[01:01:12] Richard Houskamp

Call me up. I'll come down.

[01:01:13] Rep. Jason Woolford (R)

And our process.

[01:01:14] Richard Houskamp

Is absolutely.

[01:01:14] Rep. Jason Woolford (R)

Not the best. All right. Thank you for that. Appreciate it.

[01:01:17] Richard Houskamp

And you are the folks that have to drive that.

[01:01:21] Mary Ellen Gurewitz

I oh, it might not be Ai, you know, but, but technology, um, which I think we do not have permits some other states, as I understand it, because it's something that we keep inquiring about in Colorado, I think, and Director Brady might be able to confirm this. I believe that people can, um, put their signature on a petition online, um, which, which is a really good thing. And, and I, there's one other thing I know there's been an emphasis, which I certainly share on giving voice to the, to the voters who have indicated that they are supporting something. But the petition sponsor has a responsibility to the voters. Um, and I don't think that that can be ignored. So when you are getting people's signatures and saying, we want this to go, um, the voters are counting, I think on, on whoever's circulating those petitions, um, to accomplish the task and to do it. Well, um, this, this petition was not done well, uh, not at all. Um, and I'm referring to a CV and my map was not done well either. Um, but they managed, um, so we have had any number of cases over the last cases. Yeah. Um petitions, nominating petitions much more often than ballot question petitions. But, um, I mean.

[01:03:02] Chair Mike Harris (R)

To your point, I think there's a lot of onus on a lot of people, right? The petition gatherers, um, you know, the, um, the committees that are doing this all have responsibility to the voters. The voters have responsibility to themselves as well. But I also believe the board carries that same responsibility as well. And I'm sure you do too.

[01:03:23] Mary Ellen Gurewitz

Absolutely. Absolutely.

[01:03:26] Chair Mike Harris (R)

All right. Um.

[01:03:27] Rep. Ann Bollin (R)

Rep Bollin thank you very much, Mr. Chair. Uh, thank you very, very much for being here. Uh, I do appreciate your work as a former clerk. Uh, I know how important it is and what a big job you have. It's not always easy, but I do have some questions. Like, I have a tendency to want to kind of build from the bottom up and go back to kind of the foundation looking at some of this random sampling. And, uh, you mentioned, and I see it in the, the manual that you made some changes back in 2023. And after we had seen some problems with the signatures. But also, we know that the Secretary of State's office, Bureau of Election had given out some directives to clerks in an election and was hands were slapped, went to court and basically said you had to come up with some rules on the signature curing. And, um, and I bring that up because the sampling. Um, you said there was some additional information that you came upon. It says in the petition manual. And so you sought out an academic expert. Um, and I'm just wondering how you made that determination to look for an expert, an academic expert at Wayne State University, um, which has some ties, previous ties to the Bureau. How was that determined? And then what were exactly Were those recommendations that you incorporated?

[01:04:56] Mary Ellen Gurewitz

You know, the bureau retained a firm called Raymond RAHMAN to review the sampling process, um, not just for, um, ballot to view it, to look at it overall. And there were two big changes that we made. One was to require sampling for the statewide nominating petitions, and also to change the way that sampling was done for the ballot questions to, um, to change it to a 1000 sample. It had had been a 500 sample. And Raymond said that, that using just a single sample of 1000 and doing it in particular ways, um, would give us the, the confidence that we needed. Um, I did not think that it was sufficient just to to accept that. And I took it upon myself, although I think I talked to the others about it, uh, to to give Raymond's report to a statistician at Wayne State, somebody who I found. And he said, this looks essentially this looks good to me. Makes a lot of sense. So and I think certainly it has given us much more confidence in reviewing nominating petitions than we had before. Um, the sampling procedure has been really important for that.

[01:06:32] Rep. Ann Bollin (R)

Uh, so it wasn't like a, a sought out RFP. It was just really by way of conversation and asking because the, the manual itself talks about validated by an academic expert at Wayne State University.

[01:06:48] Mary Ellen Gurewitz

And, you know, I don't.

[01:06:49] Rep. Ann Bollin (R)

Think that's a loaded sentence. That's why I asked.

[01:06:52] Richard Houskamp

Representative Bollin there the the question you're asking for statistical sampling is a complicated area. You took statistics, I'm sure in high school, um, even past you did you did better than I did. Um, but the statistics is very complicated. And so when you're talking about a sample that now represents accurately in this particular case, remember we're making, we're making the claim that it has a 90% accuracy plus or -2% or 2.5%. And that's where the Wayne State expert came to the party was, because when we were listening to Raymond, there were still these questions that said, wait a minute. Okay, so how do we know this? And we relied on Wayne State's expert to say, okay, yeah. It works. Um, does it work at a thousand? Does it work at 700 for a candidate? Uh, there are still questions. There are still things that I think we have to keep watching. The the mathematics involved in getting to the requirement are complex. The other one for you is the mathematics. Getting there can be can be derived multiple ways. And for multiple settings, there are, there's, there's analysis of these samples that are that are from an accounting perspective would pass an audit. Here's a basket full of checks. Did they all get canceled? Did they all get checked. We have a 90% accuracy. That's one set of sampling. And your auditor will do that. So another set of sampling that says we can drive this car at 90 miles an hour before the wheels fall off. And we guarantee within this sample size that the wheels won't fall off at 90, but they might at 91. That's a different processing. And so part of the thing we look at as the board is, are we talking about an audit on a on a petition, or are we talking about a constitutional and legal requirement? And that's where people like Wayne State's expert become important in the process is the mathematics used to derive is the is the, are the equations we're using or the way that we're determining is it accurate and does it, does it accurately reflect what's in the manual 90% accuracy plus or -2.5?

[01:09:24] Rep. Ann Bollin (R)

Well, I think there are some concerns related to when we look for an expert transparently and when we individually reach out and what those associations are. And so that's why I was asking on the, um, the sampling draw, because it is all done by draw. And I realize and I also understand, like when you're doing these kind of threshold or expansion to determine, you know, how sufficient is it? Um, our standard falls somewhere in the middle of it. But do you, have you established in your rule process, what your thresholds are for sampling and are they consistent? Are they published? Are they by rule or by practice.

[01:10:10] Mary Ellen Gurewitz

You know, I think that's a question better addressed by Director Brater, because they're the ones the bureau is the one that has accepted, you know, that has the recommendation for how to do it from, uh, from Raymond, which was the consultant that we used with regard to, um, to, you know, deciding on a modified sampling procedure.

[01:10:38] Rep. Ann Bollin (R)

Oh.

[01:10:39] Mary Ellen Gurewitz

And I think There are very specific directives and how it's done, but it's not something that I can speak to having not specifically done it myself. I know that Director Brater could answer your question.

[01:10:56] Rep. Ann Bollin (R)

Okay. Thank you for that. I was just wondering, since it's the, uh, procedure manual that the Board of Canvassers uses to kind of make your decisions on that, with that. Thank you.

[01:11:13] Chair Mike Harris (R)

You're welcome. Vice chair Mentzer.

[01:11:17] Vice Chair Denise Mentzer (D)

Thank you chair. We've been concentrating on the validity of the signatures. Um, but I wondered if there was other reasons this petition might have failed, because I have a good accurate document here that says the petition petition fatally fails to list all of the state constitutional provisions it abrogates, or it would appeal L is. Did that play any part in your decision, or was it simply based on the the validity of the signatures?

[01:11:47] Mary Ellen Gurewitz

It was simply based on the validity. The argument about abrogation and alteration was made by the challenger, but we didn't consider it. And that is not I think we have said in the past there has not been a definitive Supreme Court decision on that. But that's a legal question for the courts and not for for the board. Um, there have been challenges in previous ballot questions based on alteration and abrogation. And I know that a number of the Supreme Court justices have spoken definitively saying that's not the board's business. Um, I can't say that that there has been a majority opinion that has said that, but we did not consider it.

[01:12:38] Vice Chair Denise Mentzer (D)

Thank you.

[01:12:42] Chair Mike Harris (R)

All right. I have one more thing that I. I want to bring up and then I, I want to make sure I let you guys off the hook and bring up the director. Um, so. Uh, chair house camp, did you those 94 signatures you talked about earlier? Did you have a chance to visually inspect those?

[01:13:02] Richard Houskamp

I did, I did inspect those. I actually went, um, I went between meetings. I went down to the bureau, uh, Secretary of state's office here on in the Austin building. And, um, and they, uh, Mr. Farkas provided me with two of the senior staff and, and I, I had, I had an agenda, um, I had things I wanted to see, I wanted to see the, I wanted to see petitions that had been shown in the staff report as damaged. Um, and I did they, they pulled them for me. The, that I had. I had the universe in front of me, of, I'm sorry, the sample in front of me. Um, I had the full sample. They they pulled those sheets and I could examine those myself. Um, there were a couple of them of them that had, uh, MRE errors on them. Ink, ink spots, for example, uh, the illustration I gave you earlier about, you know, can you see the letter through, um, is a very real thing that we encounter. And I looked at those, but the other one was, is the first item on my agenda was the 94 signatures. And to actually be able to see those signatures side by side with the QVF file, the Bureau of Elections provided me with the signatures from the petition sheets and the sample of the from the QVF bf file. Director Brater instructed them to provide me with a written copy of that which which as. As a board member, I. I can have, I can't share. And so I not only had that day to go through those signatures, but I took several hours between that meeting and the board meeting to go through. As a matter of fact, I have a magnifying glass on my desk and use that several times.

[01:14:49] Richard Houskamp

And just to be clear, most of those signatures truly did not match what was in the QVF. Not by a little bit, by a lot. And so some of those that, that, that get your curiosity, if you if you have your curiosity there, there's signatures. Where, where. Cherry. Harris. If if, if you sign Michael Harris or you sign. Mike. Harris. That's a big difference between you just grabbing a pen and writing an M if you just write an M, that's not going to match the QVF. We had a number of those in that list where they were simply somebody who just didn't pay attention. Um, there were also some on that list that I thought matched from my evaluation. An interesting sidebar for you there. I marked all those, marked every one that I had that I said, maybe this isn't correct. And I marked them so I could question them. I didn't have to question most of those because the affidavits that were presented overlaid that list by about 80%. There was only a handful of those signatures that were not affidavit that at the end of the meeting, you'll notice, um, we asked, uh, we asked Mr. Frankowski to Cassie to pull so that we could go and examine them. And you'll notice at the end of the meeting, Vice Chair Gurwitz and I and member Cummings and member Cortez were all gathered down by Director Schrader's desk. And we were looking at those that that last few. And we deadlocked on a couple of those. Um, so yes, this was, this was very closely looked at and, and ACV was extremely closely looked at. Um, I did not make that same trip to the Secretary of State's office for em ups. Um, I didn't feel I needed to.

[01:16:50] Chair Mike Harris (R)

Out of those 94 signatures, how many did you feel had redeemable characteristics.

[01:16:56] Richard Houskamp

Out of the 94 that I felt? I think the final number after, well, including the ones that had affidavits on them, about 25, um, including the ones that, uh, did not, were not covered by affidavits. I think there were 7 or 9. And those were, those were signatures that we actually investigated and evaluated in person that day.

[01:17:22] Chair Mike Harris (R)

And out of those, approximately 25, how many of those had affidavits submitted?

[01:17:29] Richard Houskamp

I want to say 17 maybe I I'm not I'm not certain the exact number. Um, and I and by the way, just for the record, I don't have the list anymore. I gave that back to the Bureau. Sure. Um.

[01:17:40] Chair Mike Harris (R)

Thank you for that. Yeah. So of the affidavits that were submitted, how many affidavits were not accepted or considered?

[01:17:51] Richard Houskamp

I don't I'm afraid I don't have that number either. Um, I think Director Brater would probably have that for you.

[01:17:58] Chair Mike Harris (R)

Do you know.

[01:17:58] Mary Ellen Gurewitz

I don't remember specifically. I think about five, but, um.

[01:18:04] Chair Mike Harris (R)

Did you have a chance to go see the signatures as well?

[01:18:06] Mary Ellen Gurewitz

Yes. I, you know, I live in Detroit. I drove to Lansing. I spent hours looking at them, as did, uh, member Cummings.

[01:18:15] Chair Mike Harris (R)

Did you did you hear that chair House camp had gone? Because I think it was the day before.

[01:18:20] Mary Ellen Gurewitz

I knew that he had gone. We did not go at the same time because we are conscious of the Open Meetings act.

[01:18:26] Chair Mike Harris (R)

Sure. Yeah, I appreciate that. Okay. Um, well, I'm going to let you guys off the hook because I, I believe Director Brater, unless it's changed. I know you have a 12:00 you have to be out for. So I want to be conscious.

[01:18:43] Richard Houskamp

Of that time this morning. And if any of you have questions, please, you use my state email or my corporate email, but just reach out. I mean, we're all here for you.

[01:18:52] Chair Mike Harris (R)

Lisa, and I appreciate that. And I appreciate the extra time that you've given us. And obviously, you're invited to stay for the rest of the committee, if you'd like. And and if people have questions, they can obviously.

[01:19:02] Rep. Ann Bollin (R)

How.

[01:19:02] Chair Mike Harris (R)

Long follow up with you? Well, it depends on how long the director speaks, but, um, but you're more than welcome to stay. But obviously, I know we all have responsibilities we have to get to. So thank you again for being here. Director. Welcome. Thank you for sitting through that. And, um, I'll let you get started whenever you're ready.

[01:19:28] Jonathan Brater

All right. Thanks very much for having me. Um, I will try to not in the interest of time, try to not repeat some areas that have already been covered. But I did want to provide a little more depth on some of the issues, especially involving the Bureau of Elections, uh, aspect here. So thank you. Um, as you know, in response to committee's request, the Bureau of Elections has provided a large volume of documents. Um, included with those were also some questions and answers from the committee and also a memo that goes into a more detailed memo, a description of our, our procedure. So I'm not going to recite that whole thing for you today, but you have more detail in writing there. Um, that hopefully will be helpful. Um, so I just wanted to note at the outset, the committee obviously is a relatively new thing, but this is not the first time that either sponsors or challengers have been unhappy about the outcome of a petition that, that, that came before the board. Um, in several occasions in recent years, we've had sponsors, challengers on all sides of the political spectrum that have disagreed with the board's decisions. That has often been a vehement disagreement. It's often gone to court, and most of the time the courts have upheld the board's determinations. And that was the case with the two petitions this year where the where the court upheld that. But just because the board and the Bureau are having their decisions upheld legally, that doesn't mean that we're not taking seriously when there's concerns or disagreements about the petition process that are being brought forward by sponsors or challengers.

[01:20:52] Jonathan Brater

As as the board members indicated, after each cycle, we're always looking for ways to improve the process, and that's certainly the case this year as well. And we're certainly happy to talk to the committee members and look at some legislative solutions as well. A couple examples of that in 2021 2022. We talked about a little bit earlier, but there was a petition, a fair and equal Michigan petition that the bureau recommended not to be certified because of insufficient signatures. The signatures. The board accepted that the sponsors of that position, much like citizens voting this year, were very unhappy. They sued. The court upheld the board's decision. So, you know, it was the right decision. But there were also concerns that they raised about the process, about the timing and the cadence of communications between staff and the sponsors and the challengers. So even though the decision was correct, we still looked at those concerns that were raised and made some updates to our procedures as a result of that same cycle, I think well known in 2022. There were several gubernatorial candidates that had petitions that were rejected because of circulator fraud. Those campaigns contested the bureau's findings very vigorously. Um, there were lawsuits filed, but essentially the bureau found that there were some paid circulators that had submitted entirely fraudulent petition sheets, and that left the candidates short of the required number of signatures they needed. Um, those findings were also upheld in court.

[01:22:17] Jonathan Brater

There was also a criminal investigation that went into very high level of depth into those petitions. And it did find that, yes, they were fraudulent and actually led to some successful prosecutions. So again, the the decision was was vindicated legally, but we still did understand that the participants in that process had concerns about the way it went. So after that, we discussed it with the board. The board, as noted, convened a working group to look at a lot of changes that could be made and improvements that could be made. And then after that, as discussed, the board did approve moving to random sampling for candidate petitions, which we had not previously done. So that was another change we made in response to some of the concerns that were raised. Um, following that last cycle. 2324 actually, in that case, more of the complaints came from the challenger side, not from the sponsor side. So in that case, we did use random sampling and we applied it to U.S. Senate candidates. We applied it to some presidential candidates that had to submit qualifying petitions and using the methodology that that that was approved. The bureau recommended and the staff and the board accepted the recommendation that those candidate petitions should be approved. Now, during those meetings, we had challengers to those candidates that were vocally opposed to that. They wanted to to argue that those petitions should be rejected. They were arguing that there were signatures outside of the sample that were fraudulent, and that the board should consider that and look at that more closely.

[01:23:44] Jonathan Brater

There were also arguments that were raised in some cases about the circulator block. So even if the signature matched, there were complaints that were made that the person who actually put their name in the circulator block is not really the person who circulated that petition. So we heard those challenges, but but the bureau stuck with what the approved process was and recommended that those petitions be approved. And the board agreed. And again, those determinations were upheld in court. But again, after the cycle, you know, looking back on it, the bureau and the board agreed that we could do more to require candidates to keep better track of their circulators. Get their contact information so to aid the board in reviews and if necessary, in investigations. So again, even though the board's decision was upheld, the board still changed its process. So now we have a process that that asks candidates to do a better job of tracking their circulators in case those issues arise, even if the candidate still ultimately has enough signatures. So I think all those are good examples of how people do on all sides sometimes agree with what the board does agree or disagree with what the board does. And although it has upheld a withheld a lot of scrutiny, we're always open to ways to improve the process. And this year is certainly no different. So welcome those discussions. Um, it's already covered previously. But just to reiterate, it's the board of State Canvassers that has the authority over the petition process.

[01:25:06] Jonathan Brater

They're the only body that makes those decisions. No other body can make those decisions, with the exception of courts that can review their actions with lawsuits. My position director of elections is in statute. In statute it. It is responsible to be the Secretary of the Board of State Canvassers, and that responsibility and the Bureau's responsibilities are entirely separate from our responsibilities under the Secretary of State as Chief election Officer. So as part of that, the Bureau assists the board in its work. It makes recommendations, but as the board members explained, it's ultimately the board that makes those decisions. And there are times, as you already heard, that the board will sometimes disagree with the Bureau's recommendations with respect to individual signatures or sheets or even entire petitions. So they're definitely not just rubber stamping what we recommend. So, and part of that process, we do release a number of publications on the petition process. These are designed to help sponsors, challengers, anyone else interested to to understand the process from beginning to end. And those, those manuals are drawn from a number of different sources. The starting point is, of course, the Michigan election law, which does provide a lot of these requirements for petitions. There's also some things that come directly from the Michigan Constitution that are included. Additionally, the manual does reflect a number of court decisions over the years that have interpreted some of those provisions. So some things that might not be readily apparent just from reading the election law, but have been interpreted by the courts.

[01:26:29] Jonathan Brater

Strict compliance is one of those was mentioned are in the manual. And then also it basically has practices and procedures that are based on, um, the, uh, the board's past decisions in similar scenarios to try to give, uh, practitioners and, and committees information about how this all works. That manual is revised every cycle. It will certainly be revised again in 2027, um, based on court actions, board decisions, any new board policies. Now this came up and I just want to clarify. So the board has rulemaking authority over its internal procedures. The way the board works. The board does not have express rulemaking authority over the petition process so it doesn't have the express authority in the election law to promulgate rules about how it evaluates petitions and how it interprets, for example, section 476 of the election law. Perhaps it should. I think that might be beneficial for some of these issues. But but because they don't, what the board does is it discusses, you know, it makes decisions. But also outside of the context of specific petitions, it will discuss the policies and procedures it wants to put in place, and then it votes on those at open meetings. And then those determinations get put into the manual, which the board also approves. So sometimes, you know, the board, the the board's policies and procedures are limited because they cannot conflict with the election law. So and they certainly can't conflict with past court decisions that are controlling over how the board interprets the election law.

[01:27:58] Chair Mike Harris (R)

Mr. director, I don't mean to interrupt, but can I go back and just get some clarification on a piece of that? Sure. So you said the board does not have the authority to promulgate rules in this matter. Correct.

[01:28:12] Jonathan Brater

Not with respect to how it processes, petitions or interprets section 476 or other sections of the election law. They do have rulemaking authority over the the procedures of the board, generally, how the board operates. And that's where that 48 hour rule comes into play.

[01:28:27] Chair Mike Harris (R)

Gotcha. What about the random sampling?

[01:28:29] Jonathan Brater

That would be, again, an area where, in my view, the board does not have express authority to promulgate a rule on random sampling, because that goes to how they evaluate the validity of signatures, which is covered by section 476 and other sections of the law.

[01:28:43] Chair Mike Harris (R)

So if that was determined by a rule, who has the authority to make that change?

[01:28:49] Jonathan Brater

That's an interesting question. I don't know that it's possible that the the Bureau of Elections might have authority to promulgate rules. This actually came up, I think I mentioned the Fair and equal petition from 2021, if I'm not mistaken. I believe in that case. One of the arguments that that petition made was that there should have been a rule promulgated with respect to random sampling, and the court didn't accept that argument. But I do think it would be beneficial. I sort of mentioned how it may be beneficial to actually have some rule making authority so that this could go through a rule making process. But in the absence of that, it's just the board has general authority under the election law to determine how it canvasses petitions. And the random sampling procedure since 70s 1980 has been utilized by the board pursuant to that authority that they have under the election law.

[01:29:36] Chair Mike Harris (R)

All right. So we just we don't know. It's kind of the we've always done it this way. So we're going to continue.

[01:29:43] Jonathan Brater

Well, it's a legal question for sure. I mean, I think it has been challenged. There have been arguments made in court that the board should not be using random sampling, because it's not promulgated as a rule, but courts have not found that to be invalid on that basis, and they've used it for decades.

[01:29:58] Chair Mike Harris (R)

Okay. So the legislature, to your knowledge, has not weighed in and created a statute dealing with that directly.

[01:30:06] Jonathan Brater

The there was legislation, I believe, that was introduced two sessions back, which I believe would have codified the random sampling in the election law, and that did pass the legislature, but was vetoed. So legislators weighed in on it, but it hasn't been enacted.

[01:30:21] Chair Mike Harris (R)

I gotcha. Okay. Thank you. That helps me kind of digest that a little bit more. And so under the maybe we have rulemaking authority. Maybe we don't in this area. We made that determination to change the random sampling as well. Right. In 23.

[01:30:39] Jonathan Brater

The bill that was passed but not signed would have put the random sampling process in the election law.

[01:30:46] Chair Mike Harris (R)

So I'm just just to cut to the chase. Bills introduced or passing a chamber. They they don't carry any weight. Right. I mean, maybe it shows an intention of where we want to go with this. I would agree with you, but at the end of the day it carries no legal weight. So that's it's really what I'm trying to get to is how do we have the authority to do this and why are we changing it? And has it impacted anything? Because there's no direct oversight on who really has the authority to do it. But I'd be happy to maybe follow up with you and get some point to where some of the legal challenges have been, so we can review it. Thank you. Absolutely. And I'll let you get back to your your testimony.

[01:31:24] Jonathan Brater

Sure. Um, now, that saved me some time because I think I was going to touch on that a little bit later. So, um, so, uh, as noted, it is the, um, the election law does require the board to determine the sufficiency of signatures on petitions using qualified voter file. That's in the election law. We are to use the Qbf to review those signatures. Um, the as secretary of the board, what that practically means for me is that my staff and the Bureau of Elections does the initial review, um, and reviewing signatures, as noted, the board members can and sometimes do look at the signatures and they can overrule our decision. So if we determine that something matches and they think it doesn't match or vice versa, the board can ultimately make that decision. Um, but whether it's talking about signature matching or just generally, um, the bureau is making recommendations to the best of its ability based on what's in the manual and the past actions of the board in addition to what's in the election law. Um, so we talked about the, the procedure generally for initiative and Constitution amendment, but I'm just going to dive into that a little bit more detail, sort of how it goes. So when we're talking about either proposed initiated laws or constitutional amendments under the current sampling procedure, we use a random sample of 1000 signatures. And just breaking that down, the way that works when petition sponsors come in is first we have an intake process, so they deliver the sheets in many boxes to the staff.

[01:32:51] Jonathan Brater

They get a receipt, we count the number of boxes delivered, and we also provide that number of boxes we received on the receipt that in terms of actually starting to evaluate the petition, what we first do is we sort all the petition sheets in order of number of signatures per sheet. So we put all the one one signatures, all the two signatures, all the three signatures in order. Um, and, uh, we, we do ask and recommend that the sponsors presort the sheets for us because that makes it go faster, obviously, but it's not required. If they do that, we can generally get this done a little bit more quickly. Um, we then scan all the sheets so, you know, tens of thousands, um, typically of sheets are scanned in batches and again in order. So we scan them by number of signatures per sheet. Um, in a previous version of sampling that we did before 2023, we would do an initial review of all the sheets, like a face review of all the sheets before we scan them. We, we as part of streamlining now we just scan all the sheets and we do that kind of review during the sampling process. I'll talk about that in a second. Um, but then putting them in order and scanning them does make it pretty easy for us to count the number of signatures per sheet, because we can just say, okay, we've got, you know, 500 sheets that have two signatures.

[01:34:06] Jonathan Brater

So that's, that's 10,000, right? That's a lot easier to do it than trying to go one by one and add them all up. Um, we, um, uh, we then as part of scanning it, we apply an electronic Bates number. So that gets, that gets added to each sheet electronically. Um, and then we take all the original sheets and we put them in labeled folders, and we lock them in a location where only a limited number of staff have direct access to that room. And it is locked at all times when those staff are not present. Um, at that point, we now have records so we can release them to Freedom of Information Act requests. So people can request that scanned copy of all the sheets. And they do. So we provide them a cost, they pay the invoice, we give them the FOIA. Um, and now everyone can see all those scan sheets for, for each petition. It's at that point that we then proceed to the random sample. So we do use the random sampling software that's approved by the board. We enter in the information about the number of sheets and signatures, and then the software generates a random list of 1000 signatures that we are to draw from the universe. And so it'll basically say pull signature three from sheet 952 and so we do that, we will place a marking next to that signature line, and then move on to the next signature until we have 1000.

[01:35:23] Jonathan Brater

Then we have another record. So at that point we release that in response to Foias. So so both the sponsor and the challenger will want that as soon as possible. So we post it, we post information about when that's available, and then both sides can get a copy of the signature sample that we have. Um at that point we start the review. So we, we first are reviewing each sheet to see if there's any, anything on the sheet that would disqualify the entire sheet. So for example, if there's not a county of circulation, any signature on that sheet is invalid. So that's what we generally call face review. Because those are things that are just clear from the face of the petition. Um then we go into the more line by line review. So at that point we're looking up the signer and qualified voter file. We're seeing if they're registered. Um, we're seeing if they're registered in the proper jurisdiction and we're doing the signature comparison at that time. Um, before any signature is disqualified, we have multiple staff look at it to make sure that the determination to reject that they agree with that. Um, and all the staff who did the signature review for both petitions this year, the ACV and the MOP, um, do have specific training on how to review signatures.

[01:36:31] Jonathan Brater

Um, and they use the same standards that clerks use when they're reviewing absentee ballot signatures. Um, the, uh, uh, and the, there's also only a limited number of staff that are actually doing the signature review. Um, those staff are experienced in this and we do generally err on the side of finding the signature valid under our standard. So the close calls generally are resolved in favor of the signer. Of course, sometimes people will disagree on whether a signature matches. So that's, you know, share House camp had some examples of that. But that's the standard that we apply. So alongside the review that we're doing as a staff level, there is also a challenge which is mentioned. So once we put out that sample of 1000 signatures, that starts at ten business day period, where challengers can start to make their challenge. So they will obviously get that as soon as they can and they will make their challenges. They can only make challenges to the thousand signatures in the sample. They can't make challenges to things outside the sample. So I mentioned in the past year that challengers were wanting to bring in things that were outside the sample. We have said, no, we're only talking about the signature sample when we're looking at challenges. There is not an established deadline for rebuttals, and that's something we might want to look at. Um, we basically need to get the rebuttals in time to put them in our staff report.

[01:37:46] Jonathan Brater

We try to give about five calendar days for that. In 2026, we gave, I think, four calendar days for the MOP team to rebut the challenges to their position. We gave a CV five days. Initially they asked for an extra day, so we ended up giving them six days. But we do try to keep that roughly, roughly equal, and that's something we can definitely look at clarifying. And then when that's all done, we produce the staff report. So that describes the entire review we did. It includes that what we found about the validity of the signatures. It also discusses the challenges we got, the rebuttals that we got to those challenges, and then how we ultimately resolved that and our recommendation that's required to be provided at least two business days before the board meets. But this year, we put it out a week in advance to try to give people as much time as possible. And that was for both petitions. Um, there are a few different petitions that we're processing, a few different types of petitions that we're processing. Um, so we talked about initiatives, but we also do process nominating petitions and those kind of come in a, well, they do come in a very clear sequence each year. So the filing deadline for the nominating petitions. Well, I guess there's also some some judicial petitions that come in earlier, but for nominating petitions, they have to file in late April because the board has to determine if those are sufficient by late May, early June for them to get on the August ballot.

[01:39:03] Jonathan Brater

Um the proposal deadline initiate a law proposal deadline is a bit later. That's in late May. And that's because the board has to decide on those by late July. And then last in order for the timeline, are the constitutional amendment petitions which have to be filed by early July because the the, um the board has to make those determinations late August or sometimes early September to make sure that there's time for them to get on the ballot. So when we do that, we are, um, processing petitions in the order of when they're, when, when they must be completed, not in terms of when we get them. So we base our review on, we need to do this one first because this one needs to be done first under law. We're not looking at kind of first come, first serve. So the statutory and constitutional deadlines there are mandatory. So in the spring, you know, even if we get an initiated law or constitutional amendment come in the day before a nominating petition, we're still going to do the nominating petition first because we have to get that one done. Like that deadline is looming, and we do have more time afterwards to do the other petitions. That doesn't mean that we can't ever do these other petitions earlier, and we have sometimes been able to do them in the past.

[01:40:11] Jonathan Brater

I have a slide on this that shows some cases where we've been able to do this. So like in 2021, we got the Unlock Michigan petition. That was way before the deadline. It was it was back in, you know, late 2020. We got it. So we were able to do that one and do it way before the deadline. That was done 466 days before the deadline, which is the earliest one we'd ever done similar, fair and equal and raise the wage also got those well before the deadline. So we were able to complete them well before the deadline. But that's not really the norm. Typically, we are getting these done much closer to the the deadlines. There were some other ones there, like Michigan Values Life. We got that one in December. So we're actually able to process most of that and get that work done before the nominating petitions came in. And then do our staff report over the over the summer. So it really depends on when we get them. Um, but, but oftentimes we actually are able to do these quite early. Um, and that's, that's helpful for everybody involved. And, um, but this year, as you can see, both of these were done pretty close to the deadline. One of the things that we struggle with when we get petitions at certain times though, is that, um, we can't really deviate from our nominating petition work to process these initiative petitions.

[01:41:22] Jonathan Brater

So, you know, unlike some of the other ones that I mentioned, which came in years, you know, multiple years or, or the year prior in this case, the petition came in on March 4th. So that was really when we were getting into our, um, incumbent, you know, judicial candidate affidavits, our nominating petitions, and then, you know, the rest of the cycle. So we had ended up getting 133 nominating petitions that had more than 500,000 signatures. That's in addition to withdrawn petitions and people who don't file petitions. So we were really in the midst of that work when we got the ACV petition this year. Um, and so unlike some of the other ones that we had gotten well before the deadline where we could actually complete that work or most of that work before we got into the candidate crunch, that wasn't possible. Um, with ACV. Um, we did, you know, we did look at it and sort of see, well, could we start and stop, you know, maybe do a little bit in early March and then pick it back up. But it really would not have been an efficient process. And that's because of what I discussed in terms of how we handle these petitions. So the idea of unpacking all of these sheets from hundreds of boxes, doing part of the work, part of the sorting, maybe some of the scanning and then packing them back up really would have been pretty chaotic. And I don't think it would have ultimately saved a bunch of time.

[01:42:35] Jonathan Brater

I think it would have been a lot of time wasted. So ultimately, we decided not to do that. And I did explain this to the board at the March 20th board meeting. So you could sort of see how I described it at the time, but we ultimately decided that wouldn't really work well with the nominating petition crunch. The other thing there is that it could have actually hurt a CV if we did it that way, because if we had, for example, been able to scan all of the petitions in and have our universe of all the sheets in, we would have then have to give that up in a FOIA. So could potentially have led to the case where the challengers of ACV would have had months and months to look at this universe and prepare before we actually got into the sample and the challenge process. So it may have actually hurt them if we had sort of done part of the work. But anyway, that's, that's, um, that was the constraint that we had this year. So with the limited time that we have available, um, we do try to get them done a little bit earlier than we need to. So in this case, with ACV, we did get it done ten days earlier than the statutory deadline for the board. The board finished ten days earlier and that does allow some time for court review, which we do like to provide.

[01:43:43] Jonathan Brater

The courts have often opined about how they don't have enough time to review these things, and I agree with that. And so, you know, we have looked at trying to change some of the statutory deadlines, which could help with that ultimately. Um, we talked already about random sampling, so I don't want to reiterate too much. Um, a couple of things. I just want to note about what changed in 2023 though. So I think Rep Bollin had asked about how those procedures were established. I think that maybe has been answered, but just to clarify, the board votes on those procedures, um, at an open meeting, we then implement those procedures in 2023. We did put out a public purchasing request and hired Raymond. They they recommended the sampling that we're doing now. Um, we did have open meetings where the board discussed that we could take testimony on that. I don't recall at the time. I mean, I could be mistaken, but I don't recall at the time concerns being raised about the statistical validity of that sampling process. But certainly, you know, it's an ongoing process. So we certainly could look at if there's better ways to do it. Statistically. I'm not a statistician, so I'm not going to try to convince you or argue about the validity of statistical sampling. But that was the recommendation we got. And it basically was that we could replace our previous version of sampling, where we'd sometimes do a two stage sample with just a single stage sample of 1000 signatures and have a similar confidence level, a similar margin of error, and make the whole process just move more quickly.

[01:45:11] Jonathan Brater

The problem with doing a two stage sample, which we used to do, is that if after the first sample, we were within a certain margin and had to draw more, there wasn't really time to do that whole process of challenges and rebuttals twice. So we really thought that one sample would work better. But again, that's something that can certainly be reevaluated in the future. Um, with sampling, there is always a chance it's going to be close. And like frankly, we were fortunate in past years that we didn't have ones that were right on the margin. This year we had two that were right on the margin. So when you have sampling, there's always a risk that you're going to be close to or within the margin of error. I think the sampling process worked as expected, but there's always going to be, um, you know, more dispute when you're that close. So I think we can certainly look at ways this can be improved. If we use sampling though, we're always going to have a margin of error. You can look at the Raman recommendations from the past. But essentially what they explained is yeah we could we could make the sample bigger. We could draw more signatures. And that would somewhat reduce the margin of error.

[01:46:08] Jonathan Brater

But you're always going to have that. So you have to accept that if you do sampling. We talked about other ways that we could review the signatures we cannot manually review. In this case, it would have been about 1.3 million signatures between the two petitions. Bureau of elections can't do that. Um, we can look at technology. I think, um, we did discuss that back in 23 when we were looking at sampling. And I think that there's, there's, it's certainly worthy to pursue if we can use some kind of technology as part of the review. There would still be a substantial human factor, though. Um, and you know, regardless of what we do, I will say just realistically, when we have petitions that are really close, we're always going to have arguments about whether they should qualify or not. I mean, we had, we spent a full day with both of these petitions arguing about, you know, a few dozen signatures, essentially. I don't think, practically speaking, we could do that with 1000 times the number of signatures and have and have a process that works. But I'm sure there's better ways that we could do this. And I think it would benefit from the committee's input. Um, a couple other things I'll just note and then I'll wrap up. So there's time for questions. Um, is that most of most of the things that signatures get reversed on or get rejected on are things that are pretty easy to independently verify.

[01:47:22] Jonathan Brater

So if a voter is not registered in a certain jurisdiction at a certain time, that's all public information that's in the KvF. So anybody can, can, can independently determine. Yeah, that person wasn't registered in that jurisdiction. You know, they don't they don't need our our information to determine that. Um, and there's other things like, oh, they didn't write the county on the, on the form. Like that's pretty cut and dried, but there are some that um, end up being more sort of subject to disagreement or that you may not know at the outset. We talked about the duplicate signatures. Um, again, that's something that it's a matter of court precedent and board policy, but could be changed legislatively. But the policy that we have now is that the duplicates mean that both signatures are thrown out. So one thing that we encountered this year, as noted, is for both of these petitions, the challengers having access to whatever software they did allowed them to see all these duplicates that we didn't see. So we don't have the capability right now of comparing the sample to the rest of the hundreds of thousands of signatures and looking for duplicates. So in our initial staff review, we didn't find many duplicates. I think only if they were within the sample would we find them. But then when we got these challenges, and we got dozens of duplicates for both petitions that were identified.

[01:48:30] Jonathan Brater

And so that that's something that that doesn't necessarily come to light until pretty late in the process. Um, the other thing we talked about, you know, I think at length, so I'm not going to belabor it is, um, issues like when you do have a missing required element that's missing or damaged sheet, um, or part of some crayon or some ink that's covering up a letter. Um, those are not necessarily things you would notice when you're submitting your petitions and they could be subject to disagreement. You know, people can disagree whether that letter is actually covered up or whether you can actually make out that letter. And those are the kinds of things that we bring to the board and ultimately our discretionary calls that the board has to make. We do our best to make a recommendation based on what we see. Um, I think we all agree, as far as I know, in terms of bureau staff and the board, that we do not like the idea that if one letter on a, you know, language is missing or the example of the, the candidates, uh, you know, printing, cutting off a part of a, you know, a notice or somebody writing a zero when they really meant to write a six. Like we don't like to throw things out for that reason. We don't think we should throw things out for that reason. But until the Michigan Supreme Court reverses that 2012 decision, or the legislature changes the law, that is the strict compliance standard that we have to apply.

[01:49:43] Jonathan Brater

So I hopefully that is something that can be addressed. And then related to that, we also had another decision called the Wickman case that came down this cycle that said that if a circulator in the circulator block puts their village or unincorporated place instead of their township usually, or maybe city of registration, then that needs to be rejected. The court said that they have to put their registration jurisdiction. We had never rejected signatures on that basis, but the court said we had to. So that was another thing where if that decision hadn't been made, I think both petitions would have pretty comfortably, um, qualified. But in both cases there were dozens, I think in a VM there were 29 or 30 that were that were rejected on that basis. So these are the kinds of things that can get thrown at the board and the and, and the petitions that can result in things getting thrown out that previously would not have. So that's another thing that I think there might already be a legislative proposal on that, but definitely warrants consideration. Um, we talked about the signature matching already, so I'm not going to belabor that. It is the case. And it did come up with a CV that we cannot disclose these qualified voter signatures to the public. And that's that's clear in the law. It's a voter privacy issue, but it's also the Michigan election law and in some cases, federal law, because we're talking about driver's license signatures.

[01:51:00] Jonathan Brater

We cannot disclose those. So I know that I can certainly understand why sponsors would want to look at the signatures themselves, but we're not allowed to disclose those. And so I do understand from the outside, not having all the information is, is difficult, but that's the legal requirement. And what we can do about it right now is one, sometimes sponsors because they do have all this information available to them, are actually able to find copies of signatures from other petitions in the past, they might be able to get them from clerks. And then we do have this process, which has been used really for decades, but only sporadically about submitting affidavits to question to, to sort of try to rehabilitate essentially these signatures. Um, and, uh, I think that, you know, in this case, I'll have to double check the numbers, but I think there were around 25 attempted affidavits. And I think about 14 or 15 of them were accepted. And the ones that weren't were either because the signature on the affidavit didn't match the qualified voter file, which is the way we evaluate it, or it came in after the 48 hours. And then there were also disagreements about whether that 48 hours should apply to these affidavits. It's a relatively new rule. And so I think what we often see is we put in place in this case, it was administrative rules under the board's direction or changes to our manual thinking that we now have a nice clean policy that's going to sort everything out.

[01:52:23] Jonathan Brater

And then, of course, we have new scenarios that we didn't anticipate. We have very talented and dogged attorneys on both sides that are making the case as to why it should or should not apply in this way. So I think that's something that we're going to have to evaluate in the future, too, is exactly what that 48 hour rule applies to. It does refer to written materials. So I think some of the board members felt that this was written material. So it had to come within 48 hours. And I think there was an argument that these affidavits shouldn't, you know, fall into that requirement. But that's that's the way that the board determined it here. Um, I do think that, um, we do need to have some kind of cut off because we did see in past years, you know, share house camp explained, just people coming in with more and more just like on the day of the meeting, dumping mountains of paper on the board members. And that's just not realistic to expect the board to be able to, in real time, evaluate some of these written materials. It's also not really fair to each side because they should have the chance to look at what what each side has submitted and make arguments in response.

[01:53:22] Jonathan Brater

So it's obviously not unusual in legal proceedings to have some kind of deadlines. And we need some level of an orderly process. But but I think that can certainly be evaluated. So those are the main reasons why sometimes petitions will have fewer signatures than they they thought they did. So I think ACV was here. They said they thought they had about 70% validity. So they would have, I guess, been expecting of the 700,000, that about 200,000 would be rejected. Um, so I don't think it's that surprising. Ultimately, when you look at the duplicate signatures that they may not have known about the non-matching signatures and some of these other things to end up at about 62% valid versus what they thought. That doesn't seem too surprising to me, but but I can certainly understand how because, you know, the sponsors don't have all the information in advance, it can create disagreement. So ultimately, I do think, you know, I think that the board's presentation demonstrated that they often do disagree on things, sometimes with each other, sometimes with the Bureau. But I do think they are very diligent and conscientious in terms of working together and trying to get the right answer. And also, you know, while ultimately people have every right to be unhappy with decisions the board makes, I do think the board is always trying to improve its procedures. So I would welcome further discussion of ways that could happen. And I'd be happy to answer questions.

[01:54:40] Chair Mike Harris (R)

Thank you. And it's um, and I do agree with you on portions of the 48 hour thing, right? I, I do think it's unfair to have piles and piles of new information come in where I, I question things is when we have an actual voter coming in with a piece of paper notarized validating their signature, and now we disenfranchise them. I mean, Mr. Director, how long do we get people to cure a ballot?

[01:55:10] Jonathan Brater

Uh, so under the election law, it's three days after the election. You can cure a missing AV. So?

[01:55:16] Chair Mike Harris (R)

So three days after the election. But for someone to validate their signature on this, it has to be two days prior to a hearing. You know what I mean? This this is where the fairness aspect comes. And I'm not blaming you, but I think there's a problem. When we disenfranchise 700 plus thousand signatures over an argument over a handful, and it very easily could have been that way with my map too. And so I'd love to have deeper conversations on random sampling with you and really kind of how that, that plays out. Um, especially as we're getting to the point where we're evaluating different policy decisions. So I'd love to meet with you in the further, uh, in the future. Rep Smit.

[01:56:04] Rep. Rachelle Smit (R)

Thank you, Mister Chair. And thank you, director for being here today. Um, and walking through a little bit of this process with us and helping us understand a bit more. I had a couple of things. There was some clarity in the, um. One of the things I did still want to bring up though, ACV had submitted all of their petitions March 4th. Um, and you mentioned that and talked about that a little bit. And, um, my mop was May 27th, nearly three months difference there. Um, ACV when you look at it as a whole, I mean, there was 166 days for staff report versus 58 with my mop. So that right there just tends to give a lack of confidence to the voters, to the legislature, to people, the public of why was this, you know, seem to be drug out so long. And I understand that it's a big election year. And you had received a lot of petitions. But that's just one aspect that, I mean, is there any how does the Bureau determine the timing and is there a precedence that. You just choose whatever you want to.

[01:57:20] Jonathan Brater

Yeah. So I agree. Thank you for the question. I agree that we could do a better job of explaining the timelines in advance so that people understand if they submit something when it's going to be reviewed, I think would be beneficial. That's one thing that we can take away from this. Um, the priority is based on the deadline of when we have to finish. So oftentimes, and this was the case with the Moss petition, they will come in right at the deadline. And when they come in right at the deadline, we have very little time to process the petition, but we have no choice. We have to get that done by the statutory deadline to allow the board to do it. If someone brings it in before the deadline, it really becomes a question of when. When can we set aside this chunk of weeks and months of staff time that we need to devote to do this work in an orderly way? So in past cases, you know, that I that I brought up, like the Michigan Values Life petition or the Unlock Michigan petition. We did have enough lead time before we got into that spring nominating petition calendar to get that work done. And so we did that. And that's beneficial to us as well, because then we don't have to process these petitions in the middle of an election cycle. But it was because of the specific timing here that when we looked at it, we didn't think that we could really sequence the work where we could actually finish the citizens vote processing before we had to pull those resources onto nominating petitions. And then the initiative petitions if they came in. And so that was what happened this year. But again, I understand, um, folks wanting to have petitions processed more quickly. So something we're going to look at is maybe just setting, you know, advance deadlines. Like if you file this kind of petition at this time, we're not going to look at it until three months later. And that might be beneficial.

[01:59:03] Rep. Rachelle Smit (R)

I think that would be helpful and provide clarity to, um, and I've got a lot of questions, so my apologies right now. I'm just, if I may, Mr. Chair, follow up with a question about the, um, random sampling and that aspect of it all. Um, okay. Thank you. So in 23, I understand all this changed. Um, do we publicly disclose the software that is doing the sampling? Is that out there for us to, to know?

[01:59:33] Jonathan Brater

Yeah. So the, the RFP that we put out, I think described, and we have a purchase order that I think we've shared with the committee. If not, we can. That describes the tool that was designed by Raman. Um, it's, you know, I think it uses Microsoft application to run the sample. Um, so I believe we provided all the information. It is, it is public, but if there's any questions about what we provided, we can work to, to get more detail on that.

[01:59:59] Rep. Rachelle Smit (R)

Okay. And my follow up to that is, um, since all this change. Um at all. What did the random sampling software change from prior to 20 to 23? Just beyond the the thousand signature threshold. Was there anything else that has changed?

[02:00:17] Jonathan Brater

There were basically two things that changed. So, um, one thing that changed is we, we, we used to, before we put sheets into the random sample, we used to go through all of the sheets one by one, 10,000, tens of thousands. We would go through them and we'd say, before we do a random sample, we're going to see if there's any sheets that are, uh, facially invalid. So like the county's missing that example. Right. And so we're just going to take these out. These are we know these are invalid. Now we have this smaller baseline and we're going to do random sampling based on that. So that's one thing we did. But in talking to Raymond we asked them to look at if that actually made any statistical difference. Whether you do that face review with a universe and then cut down the sample and change the validity rate you need, or if you just do it all at once. And Raymond told us, it doesn't really matter. So we were essentially just wasting time by doing this two stage review. And so we just put everything in, draw the sample and just do all the face review in the line by line review. That was one major change. And then the second major change is we did use to have a procedure where we were authorized to take a smaller initial sample.

[02:01:21] Jonathan Brater

So it was usually around 500. And then if when we did that sample, it was within a certain margin, we could then draw like another 2000 signatures to get a bigger sample. So basically a two stage sample. And the, the benefit of that was sometimes we didn't have to draw as many signatures at the outset, so we could go a little bit more quickly. But the downside is like you can imagine in this process with a compressed timeline, if the initial sample is not valid after we get this ten day challenge period and etc., and then we're within that margin, then we basically have to repeat the entire process. And so it really is risky to have to To potentially double the amount of review time and challenge time. And so we also asked Raymond to look at, you know, is this really providing a lot of statistical benefit, doing two stages? And you know what? You can see the numbers in the reports that we submitted, but they basically said it didn't make a huge difference. And we were better off just doing a single stage sample where we draw a larger initial sample. So those were the two main differences, in addition to the fact that we now use the random sampling also for candidate petitions.

[02:02:27] Rep. Rachelle Smit (R)

Okay. So I guess in my understanding of this too, I mean, as you mentioned, both of these initiatives fell within the margin of error for the own bureau's, um, margin of error. So maybe going back to a two step, two stage process would be advantageous in this circumstance when, when we're this close to having something, um, another level of determining that.

[02:02:54] Jonathan Brater

Yeah. I think that in this case, it would have been nice if we could do that because we would have been able to draw a larger, a larger number of signatures. And possibly once we drew that larger margin, we would be outside of the margin of error. Now, it's also possible that that second stage would fall within the margin of error, because we can never be sure with sampling that we're not going to be within the margin. So I think, you know, we could look at that. But the downside you're sort of trading one problem for another there, which is now we need more time. So we would need to look at extending the petition process. And some of that would probably need some statutory changes to make sure that we have time to do that multi-stage sample. Because again, once we draw those additional signatures, then we get more challenges, then we get more rebuttals. And so we basically need to do the process over again. So I do think it's worthy of consideration. Um, but it just needs to be coupled with some other changes that would allow us to finish.

[02:03:46] Rep. Rachelle Smit (R)

Okay. Thank you. Thank you for your clarification there. I have more, but I will reserve some time for others. So thank you, Mr. Chair. Yeah.

[02:03:55] Chair Mike Harris (R)

Just for clarification on that. And I'm sorry. I'll go right to you. My song after this. Um, the. You said you needed you would need more time. You did the old procedure from 1980 to 2023. What changed that would allow for you to need more time now versus the old procedure?

[02:04:17] Jonathan Brater

Well, one thing that's changed is we've kind of stretched out a little bit the process. We give more time to the challengers and the sponsors. We also try to finish earlier to give the courts more time. So we've sort of tried to stretch out the review period to give everybody more input than we used to. And so that extends the process. And so doubling that well doubling the old process might have left enough time. Doubling the new set of days I think would create an issue. The other thing is like, frankly, we kind of got lucky in the past. Like we didn't have to do a second stage in the most recent few years. I think there was one case where the board did ask us to draw a second sample, but that was one of the ones where we had more time. Like it was filed way earlier in the calendar, so we weren't running up against a statutory deadline. I remember prior to 2023 with some of these ones that came in like right at the deadline, just crossing my fingers and hoping that we weren't going to have to take a second sample because it would have been just completely frenzied for us to pull these signatures, basically have a few days for everybody to weigh in. And so I think it's certainly possible to do two stages. We just need to make sure that there's enough time for everybody if we do it that way.

[02:05:25] Chair Mike Harris (R)

To be fair, the new process, we didn't give these folks much time either, did we? With the new process.

[02:05:31] Jonathan Brater

I would like to give them much more time. I mean, I think we have the staff report out for a week. Um, I think more time would benefit everybody.

[02:05:38] Chair Mike Harris (R)

Yeah, I would agree because there wasn't much time for challenges or, or to dig in and, and deal with this. And then you saw emergency filings with the courts and, and, you know, it's just I don't think it's a fair due process. Move to Um, if we're stretching the process out to give people more time, obviously that current process is not working properly. Is that fair?

[02:06:00] Jonathan Brater

I think that the deadlines in statute do not provide enough time for everyone to, to, to have the amount of time they should have to review it, including the courts.

[02:06:10] Chair Mike Harris (R)

I appreciate that. Thank you. Uh, Representative song.

[02:06:14] Rep. Mai Xiong (D)

Thank you so much, chair. Director, thank you so much for being here. What type of staff training does the BOE staff receive in relation to the signature verification process? And are they signature experts?

[02:06:28] Jonathan Brater

So the training that the staff. Thank you for the question. The training the staff receives is essentially the same as the training that clerks get when they review absentee ballot applications and signatures. So the way that we rely on, um, you know, identity validation for voting by mail and also with this process is human beings looking at signatures. So we do provide pretty extensive training. Um, some of the standards that we, um, some of the standards that we apply are included in the manual, but then we also have a signature training document that both clerks and staff have access to. That sort of goes through examples of, um, you know, reasons that signatures might look a little bit different, but actually do match and other things to look for in terms of distinguishing characteristics and redeeming qualities. So that's all, that's all public. Um, in terms of the training that's provided, it's also a question of experience. And we have staff that have just looked at thousands and thousands of signatures over the years. And so some of that is due to training, but also just the amount of time they spent doing this.

[02:07:29] Rep. Mai Xiong (D)

Great. Thank you. And if you could pull this slide back up with the timeline, I just want to be able to just understand this. So ACV submitted their petition on March 4th, but staff was working on the judicial candidate and the nominating petitions. Right. Because those are due in late March and early June. And then you received the mop up in late July or May. Right. So they would have been working on that in consecutive order. And so if if a organization wanted their petition to be reviewed quicker, would you say that you would need more staff or would you move staff that are working on the other petitions to the A, C, V one? And what type of resources would you require?

[02:08:25] Jonathan Brater

Yeah. I mean, if a if a petition is filed on that timeline where we essentially would have to duplicate our work, we would need, we would need several more staff members to do that. Um, including experienced staff members to do it at the same time.

[02:08:35] Rep. Mai Xiong (D)

Thank you. And then regarding the technology and the use of AI, it just full disclosure, I'm a little concerned about the use of AI because I don't think it's 100% accurate. Even technology Requires humans to be properly trained to utilize, and that would be an additional cost to correct.

[02:08:54] Jonathan Brater

Yes, we would need funding for that.

[02:08:55] Rep. Mai Xiong (D)

And have you had to let go of any staff in the past due to budget cuts?

[02:09:01] Jonathan Brater

We have not been able to fill some positions we could have used because our budget has either been flattened or. We haven't been able to to sort of fill some open positions, but we haven't had to let go of staff.

[02:09:13] Rep. Mai Xiong (D)

All right. Thank you, thank you. Chair.

[02:09:16] Chair Mike Harris (R)

How many open positions do you currently have?

[02:09:20] Jonathan Brater

Perhaps two. Okay. Two.

[02:09:23] Chair Mike Harris (R)

Would would those positions be within this that if you hired it, would expand it or are they in a different area?

[02:09:29] Jonathan Brater

They're in a different area.

[02:09:30] Chair Mike Harris (R)

Okay. All right. Well I'm happy to talk further on that too. Uh. Rep Woolford.

[02:09:38] Rep. Jason Woolford (R)

Thank you chair. Uh, thank you for being here today. Um, I'd first like to give a compliment. Um, you know, I looked up what? You. What was paid to Raymond, which is really seems fair. Good. Because all the other times that we've looked at things, uh, it was outrageous. So compliments to you, sir, on that, um, you know, I was waiting for the more money and more staff, uh, to, to be heard today. Um, I guess the question that I have is, and I know it was asked, but I'd like to actually hear a real answer or a more in depth, I should say, uh, why, why change this, this process? And, and what I mean by that is the old process, uh, marijuana and abortion, uh, got put on the ballot, uh, with really no issues. Uh, then we moved to a new process that basically looks at 0.13% of, of, uh, these things that are submitted. Uh, it's this process is confusing. It seems to be ineffective. Especially when we hear things like we got lucky on, on other things. Uh, and the reason that I think about this is, you know, my bill on the, on the House floor for citizens only voting passed the House with no Democrat support.

[02:10:59] Rep. Jason Woolford (R)

And the reason I mention that is because we have Raymond company. They hire Doctor Merola, uh, Morella, however you pronounce his name. Uh, and from what I found, he's not an actual statistician, but he's, he's a professor of sociology. Um, and there's 600/600 people that are statisticians that do these things. Yet all of this comes down to us looking at him as a statistician and his process and saying that, yeah, this seems good. And me and constituents and other people along with, you know, Republicans and Democrats because citizens only voting polls over 80% is we pick a guy who who is given to AG Nessel and Secretary Benson and Governor Whitmer and is giving. So I would like to see this process seem to be more fair. And so my question is, why change the process that seem to be working? Why did we change it? And going forward, what do you think that we could do to, you know, because I'm sure everything was done on the up and up. But, you know, for the citizens and those that are voting who feel like it's not, what could we do to, to make those things more fair? Thank you sir.

[02:12:18] Jonathan Brater

So we did use random sampling for those other petitions that you that you noted. It was it was a prior version of random sampling, which was the two stage sample. Um, so, uh, largely the process was the same in terms of sampling, but yes, we did make changes to the sampling procedure. Um, we, you know, when we were doing that, we did try to, we provided a lot of time for the public to weigh in on it again. I don't know of anyone who raised concerns at the time about the statistical methodology. I probably would not be able to evaluate mathematics. I definitely would not mathematically be able to evaluate whether those whether those concerns would be, um, uh, well taken. But I do think it could be beneficial, especially now with the scrutiny on this, to maybe pull in, um, another group of statisticians to look at what we're doing now, see if um, there's ways it could be improved. Um, we do put out information about the way the sampling process works, but we could certainly put out more to help people understand it. So I think that would be something either legislatively or the board could look at providing more information. And also if you want to take another look at the sampling procedure we use now, or even if we want to do something besides sampling, um, if there's a better way to do that, I think that's a good discussion to have.

[02:13:32] Rep. Jason Woolford (R)

Yeah. And the reason I ask also is because one of the reasons, uh, that, that this company was hired was that you guys said that, uh, you had, uh, this this was rough on the, the staff and that this would be able to save some money and time and people working on this. Uh, having said that, with this process, what, what jobs were able to be, uh, limited in this, uh, because you're asking for more people yet we did this study in hopes that it wouldn't be as burdensome on, on staff and the taxpayer. So if you have that answer, I appreciate it. Thank you sir.

[02:14:07] Jonathan Brater

Yeah. We used to have to hire a lot of temps, frankly. So we would often have to hire 8 to 12, depending on how many petitions came in, a lot of temporary staff. And then we had, uh, because, because our existing staff, you know, we would, we would deploy them to petition review, but they also have other things they need to do throughout the year. So we can't just drop everything and have everybody on our team look at petitions. So we were often reliant on number one, um, temporary staff and number two, a lot of overtime. And those were costing the bureau and the taxpayers quite a bit of money. So this process, these process changes have cut down on our need for that.

[02:14:44] Rep. Jason Woolford (R)

Thank you thank you, Chair Boland.

[02:14:49] Rep. Ann Bollin (R)

Thank you very much. So, um, I understand, you know, like the two stage, but what would stop you from kind of like the automatic trigger instead of just looking at a thousand, like you actually set it up, it seems to appear that it's just a matter of scanning and it's randomly selects numbers, the pages. So why not have 2000 right out of the gate?

[02:15:14] Jonathan Brater

We could I mean, I think that, um, the, what the Raymond report indicated was that you sort of hit a point of diminishing returns the more you add. So adding more and more signatures does slightly lower the margin of error. But it, it does so at a point at which the amount of time you're spending on it is not likely to get you a much more reliable answer. So we could do that and we could draw a larger sample. It would slightly lower the margin of error, but we could still end up having this discussion in two years if the one we pull is still within the margin of error. With that larger sample.

[02:15:49] Rep. Ann Bollin (R)

But it seems to me as though it would be very easy to do. No expense. More expense than you have. I mean, they're just picking another thousand more or something. Um, but the um I have a question about the, the 90%. I mean, how did you come up with 90%? Because it's, uh, you know, generally it's, you want 95% or better. Why 90%?

[02:16:15] Jonathan Brater

So there's a 90% and I'm getting, I'm going to go to the limit of my statistical understanding here. So forgive me, but there's a 90% confidence level. And there's a which which has to do with how, uh, how reliable the sample you drew is. And then there's a 2.5% margin of error, which has to do with like sort of how many projected signatures could actually could be valid based on what you're projecting. My understanding, and based on what Raymond reported, is that those are sort of standard auditing metrics. And my understanding is that those are similar or maybe identical to the percentages that were used in the prior version. Again, you can always go higher. You can get you can get a higher confidence level, you can get a lower margin of error. But just because of the way statistics work, which is mostly beyond my understanding, what it turns out to be the case is as you draw more and more signatures, you start to increase those confidence levels and reduce the margin of error by a lower and lower amount. So at a certain point, it's not really worth the juice isn't really worth the squeeze.

[02:17:14] Rep. Ann Bollin (R)

So, um, in recent years you've established for the risk limiting audits, um, random sampling as well. Uh, with is this in line the same percentage?

[02:17:27] Jonathan Brater

So the methodology of the risk limit is slightly different, but I believe we also do shoot for a 90, a risk limit of 90, which is essentially the same thing as a 90% confidence level, is my understanding.

[02:17:39] Rep. Ann Bollin (R)

Okay. And then if I may, Mr. Chair, um, on the custody of the actual petitions, like who do you determine, uh, has access to that? Is there any record of custody? Because it seems to me we're creating new documents by this way of scanning, like we go through this step and then that becomes another scan for, uh, for FOIA purposes, like help me understand who has access, why we're creating new documents for certain audiences.

[02:18:12] Jonathan Brater

So the actual, the number of staff that have access to the actual paper is limited. We just have a couple of, uh, staff that, that have access to the room where they're kept and the room is locked. We obviously sometimes have to when we have to take the boxes paper out of the boxes. We have more people involved then because we have multiple people who are sorting and scanning. But that's all being supervised by the same senior staff that have access to it. So we are maintaining controls over that paper. We also do have a receipt that we provide to the sponsors, so they know how many boxes we got from them so they can compare that. And, you know, of course, sometimes I believe the sponsors will do their own logs of what they submitted so they can independently verify that, at least to some extent in terms of the, um, the electronic versions of things we provide. I mean, that's essentially because it's the most efficient way of, of drawing the sample. So we could, you know, alternatively, and I think in the past, there's ways where you can take the paper out and hand stamp it.

[02:19:12] Jonathan Brater

You could have people come in and look at the paper and they still can come in and look at the paper if they want to. But what happened in the past is that we would have the campaigns and committees and other people come in and do their own scanning of the paper so that they could review it when they went back. So they were going to be ultimately looking at an electronic version of it anyway. So we decided that the most efficient thing to do would be to just do our own scan. And then we have one scan of all the petitions in this, in the sheets, in the petition, which is the what we call the universe. So that's tens of thousands. And then we have of sheets and hundreds of thousands of signatures. And then we have the sample, which is another digital document, which is just the sample signature. So we have those three. We have all the paper that people can look it up if they want to, but then we also have the electronic versions of it and it's just a matter of efficiency.

[02:19:59] Rep. Ann Bollin (R)

Well, what concerns me about some of that is that, you know, in each iteration, it could get less clear potentially, and then it kind of ties into the AI and the concern about it and what the thresholds are. And the AI is only as good as really the human confirmation of that information. And when it comes to, for example, signature curing software and thresholds And so when you're setting thing, is there anything in the work you do that you set thresholds in, um, to make sure that you're consistent in the application of that.

[02:20:39] Jonathan Brater

So we, uh, thresholds in terms of the, like, whether we're, um, I guess I'm not totally understand the question. What, what do you mean by thresholds?

[02:20:48] Rep. Ann Bollin (R)

I mean, like, I'm trying to understand, you know, why? Uh, first of all, why wouldn't you try to pick X number of sheets that are actually valid doing the face review? Like to me that, I mean, having reviewed petitions, lots of them and thousands and thousands and thousands of signatures as a clerk, um, over time, I, I don't understand why you eliminated the face review and try to I mean, work, we want to err on the side. As a clerk. I was always taught that you want to err on the side of the voter. You want to, you know, certainly make sure the voter has their their rights and they're not disenfranchized. So why did you eliminate that step in the petition review process? That seems to me would significantly contribute to efficiency, confidence, trustworthiness, and, you know, uh, minimize the rebuttals.

[02:21:41] Jonathan Brater

Mhm. So we moved the phase review to, instead of having it happen for the entire petition and then scanning what's left to instead scanning the entire petition and just doing the face review of the sample. So we still do the face review, but we do the sample first. And the reason we made that move was because what we found when we asked the experts on this, is that what we're doing ultimately is a statistical projection of how many signatures are valid in the entire petition. And mathematically, again, we were told that it doesn't really matter whether you review all the sheets and take out all the ones that have a facial facial problem with them, and then scan the rest and calculate the validity rate you need based on what's left versus just scanning everything and then just doing the face review and the individual review within the digital version of it. What what we're told is it makes no difference in terms of how reliable the projection is. And so essentially we were wasting time.

[02:22:39] Rep. Ann Bollin (R)

I think the statisticians can say that and they're supposedly the expert. But I think that this is elections and this is about voting rights, public confidence and trustworthiness. And so I think sometimes I think that, uh, the canvasser vice chair said, you know, or somebody said about common sense just seems to me taking a common sense approach, trying to err on the side of having public trust and confidence is something that should be considered.

[02:23:06] Jonathan Brater

Well, we can certainly look at that.

[02:23:10] Chair Mike Harris (R)

Thank you. I mean, just to reiterate, I and I'll agree. And it's probably beating a dead horse, Mr. Director. But, uh, you know, again, we're not auditing a retail store. Right? We're not looking at, you know, what, what's our loss ratio? You know, we're disenfranchizing an awful lot of voters if we don't take it to the next level. So while I appreciate what statisticians do, sometimes they're not focused on the level of importance that we look at here. Um, a wise man once, I think, gave me an analogy of, you know, do we do we want to know if if we don't, if we've lost some boxes of macaroni and cheese on the shelf and we're doing an audit to see what kind of loss that we've had. Or do we want somebody that's going to dig in and be able to look at, um, you know, blood results or other tests and really narrow down if I have a debilitating disease. Right. And the level of importance that we should be putting on something like that, I think is a very similar level that we should be putting on the importance of, of a voter. Um, so I just think we need to make the extra effort and go really deep into this and make sure that everybody is getting a say. And again, if it's boiling down to these last two initiatives where we're talking about a very, very slim margin of a percent, um, weighing the cost of something passes or fails, I think we should look at a, a tighter statistical margin to, um, vice chair Mentzer.

[02:24:49] Vice Chair Denise Mentzer (D)

Just a quick question. Is the a c the a c v petitions, one of the largest that you've ever received. The number of voters.

[02:24:59] Jonathan Brater

I would say yes.

[02:25:02] Vice Chair Denise Mentzer (D)

And the size of that petition with a lack of two, you know, two staff members that you could have used, did that make it more difficult to, uh, Uh, complete your work.

[02:25:17] Jonathan Brater

The number of sheets. I mean, the more sheets that we have to scan, you know, definitely adds time to it. I think part of the reason we use sampling, though, is that it allows us to handle those larger petitions.

[02:25:27] Vice Chair Denise Mentzer (D)

Thank you.

[02:25:32] Chair Mike Harris (R)

All right. Thank you. I hope we got you out in time to make your meeting. Um, do appreciate you being here. And I would definitely I'd love to follow up with you on, on some things and, and work through some of these issues, but I appreciate you being here.

[02:25:45] Jonathan Brater

Thanks very much.

[02:25:46] Chair Mike Harris (R)

Absolutely. Uh, and with that, we've all been sitting up here for a while. So the committee is going to go ease until, uh, let's try and be back here at 1235, please.

[02:43:56] Eric Doster

When I petition. Your validity should apply. There were two petitions that were reviewed by the Bureau of Elections this year ACV and Michiganders for money out of politics, which I shall refer to as Emma. Remember, I was opposing the petition that had its hearing before the board on July 24th of this year. Therefore, I'm in a unique and a unique position to objectively review how each of these petitions was reviewed by the board and by the bureau. Consequently, the focus of my presentation today will illustrate where different standards were used to review the ACV petition that were used just a month earlier with respect to the petition. Please do not interpret my narrow focus today as any agreement with the Bureau's interpretation of other matters that I'm not addressing. For example, I am not going to address the date determinations where the board and the Bureau completely ignored the findings of a certified handwriting expert. Again, my focus here is to compare the a c v review to the MOP review. And as the chair of this committee emphasized at this committee's organizational meeting last month, you just want facts. So here are the facts which objectively demonstrate that there were at least four instances where the Bureau and ultimately the board used different standards to review the ACV petition than it did just a month before with respect to the petition. In these four categories, just talk about them now, the the circuit circulator or city or township issue.

[02:45:55] Eric Doster

Uh, the second category damaged missing element sheets, the third accepting challenges after the deadline and for the acceptance of materials at the meeting. Uh, one of the issues that arose dealt with the information that a circulator puts down on a petition and, and on the slides that I have here, um, the, what we're talking in the pack and I've given you this package of materials. This is attachment. One of the materials that each member was provided is a completed petition at the bottom of the petition in the circulator certificate. You will see. Excuse me, where the circulator wrote Saint Charles here on the line for city or township. That is what we are talking about here. According to a case called Wickman v Norway Township, a circulator needs to write the name of a city or township. In the Wickman case, the circulator wrote the name of a village, and the court said that the petition was invalid. Now, in the petition, which I opposed, there were a number of out-of-state circulators that did not comply with this Wickman standard. I argued that the Wickman case should apply to out-of-state circulators, even though Wickman concerned a Michigan circulator. And in. And so I'd like you to go to attachment three, which is the excerpt of the A transcript of this July 24th mop hearing. And I just want to briefly go through what was said. And I started off here on page 222 with the statements of Mr.

[02:47:41] Eric Doster

Grill. That's Eric Grill, the assistant attorney general who represents the bureau and the board. Mr. grill says, and I quote, with respect to the Whitman case, we are obviously aware of it. Whitman did determine that a city or township was required. However, respectfully, to counsel's argument. That's me. Uh, it's not that they did not distinguish between in-state or out of state. Uh, it is out of state was simply not addressed in that case. It wasn't part of it because the issue was about the unincorporated village of Vulcan, which was in the state of Michigan. I think we can only say it's unclear how the Court of Appeals or any court will review out-of-state cases when out of state law or other state's laws on what constitutes a city or township may be different than ours. And then vice Chair Gurwitch says. If it's unclear whether Wickman would require the rejection of these signatures again speaking about EMA, then I would not reject them. You know, I listened to Mr. Cordis, another board member, who says that it's a high bar to reject signatures. Then Mr. Cordis says, I agree. And then vice Chair Gurwood says, I agree on that. The bottom line here is that the the board refused to extend the narrow facts of Wickman to invalidate a signature and quote, if it's unclear whether Wickman would require the rejection of these signatures, end of quote, then the board would not reject them.

[02:49:10] Eric Doster

And remember how we started with this discussion that signatures are presumed valid. Therefore, how the board treated the MOP petition petitions here makes sense. Now, fast forward to the ACV hearing on August 24th of this year, and the bureau has invalidated two signatures because the circulator wrote the name of a of a township, which also happened to be the name of a village. And what I've got on the screen here is an excerpt from the the supplemental review. And these are the petitions again set forth in attachments one and two in your package in in attachment one, Saint Charles. Saint Charles is the name of a village, but in full compliance with Wickman. It's also the name of a township. Same with attachment two and Metamora. These were certainly not the Wickman facts. And as you just heard from the map hearing, if it's unclear how the court would apply Wickman to a different factual situation, the signature should not be invalidated. But this example gets worse. The board even acknowledged that the circulator wrote the name of a township, and we have provided further proof of this on attachment five, which I have on the the PowerPoint screen. Now that says that, you know, this satisfies Wickman and should have ended this discussion. But then the Bureau took an unprecedented extra step and said that the circulator did not reside in the township. They wrote, and I refer you back to attachment four and slide eight.

[02:50:51] Eric Doster

However, in the staff report, which I've put a portion of it up on the on the PowerPoint dated May 14th, 2026, which is also in your packet as attachment six, the Bureau rejected this same. You need to reside in the jurisdiction you wrote requirement as follows. And this bears repeating and quoting quote regarding the second alleged circulator error in the challenge, staff concludes that a circulator who writes their post office. City of Holland when their voting jurisdiction is. Park Township does not violate the rule from Wickman or MCL 168.544. See nothing in Wickman or MCL 168.544. See. Prohibits a circulator from using a post office city. Rather, Wickman requires that a circulator indicate their city or township. Because Holland is an incorporated city, the circulator properly indicated their city. End of quote. In other words, in May of this year, the bureau held that if the circulator lists a city or township, which is their post office address, their actual residence does not matter. But again, this is not how they treated the ACV petitions. But this treatment of these two ACV petitions signatures gets even worse. Remember in the two ACV petitions that you have as attachments one and two, the circulators each listed a township, which was their postal address because the names of these townships were also the name of a village. The bureau invalidated these two signatures because the circulators were registered in different township again.

[02:52:31] Eric Doster

This further review was an extension of Wickman, which the board refused to do with respect to Emma, and is also contrary to the Bureau's staff report that I just reviewed, where the Bureau said that the actual residence does not matter as long as the circulator lists the city or township. Well, now add to this comedy of errors the fact that in Map there were two petitions that also listed a village which was also the name of a township. And these map circulators each resided and were registered in a different township. And I'll just quickly go through these next three slides. This is from the map petition. The circulator there wrote Calumet. Calumet is a village. It's a It's a township and the circulator lived in Schoolcraft Township. Same with the next petition slide circulator for the petition said. Grass Lake Grass Lakes, a village. It's also a township, but the circulator lived in Waterloo Township. And again, that's the next slide. Here is just again, the same petitions, the same information. And it's just the the QVF signature file. Um, now this is the identical facts as the two Acve circulators, each circulator wrote a name shared by a village in a township while living and being registered in a different township. This is the identical situation to these two Acve petitions. However, in Emma, the bureau found them to be valid signatures, and I refer you to attachment ten, which is the Bureau's determination that these two identical petition signatures from MOP were valid.

[02:54:19] Eric Doster

And again, that's on the the screen. Now, the bottom line here is that when the bureau invalidated these two ACV petition signatures, it needed to treat ACV differently than MOP in three different respects. First, it extended Wickman beyond its facts. Second, it added a residency requirement where the circulator correctly listed the name of a city or township, and three, it ignored the identical situation that had just approved a month earlier with respect to MOP and. And I promise that the other three points I make will go much faster than from this last one. Um, the next area, uh, damage sheets and missing required elements. Uh, and let's start with the standard for, for how these, uh, how this is applied. Uh, in attachment 11, which I've put forth on, on this screen. Um, the petition manual says that words are obscured and the Bureau of Elections takes the position that a letter must be completely missing. As the 2022 transcript testimony of elections or elections, director Brater states there that the the letter has to be completely missing. To be invalid. Um now attachment. The attachment 12 that I've got there are actual. Are the pictures of the actual mop petitions that were all deemed valid. Um, the first one you will still see part of the obscured letter. Um, the, I'm not sure about the second petition, as the original petition may show a letter sticking out somewhere even though we cannot see it in this picture.

[02:56:09] Eric Doster

Um, I have no excuses about that. Third one. An explanation for the third petition here because the the I in signature on the circulator certificate. And there's kind of a blow up on the the last on the slide there. Uh, it's completely missing. It doesn't take much to take out an eye, but more about this particular petition in a second. Um, now compare, uh, this next slide. And that's also set forth on attachment 13. On your packet are the acve petitions, which were all deemed invalid. Notice how each, in each one of these pictures, none of the letters are completely missing, even though the bureau came up with the opposite conclusion than it did in Emma. Although parts of letters are sticking out in each one of these examples, I call your particular attention to the second to the last one. It's on the lower left hand corner of the of the of the slide screen where every letter. Every letter in the word signature is clearly visible. Now go back to the last example in attachment 12 and and where the I is completely missing in this petition. Now please go to attachment 14, which I've put forth on the slide here. And this is the discussion at the MOP hearing on this very item on page 199 of the transcript. I state that all it takes is one letter.

[02:57:42] Eric Doster

Uh, and, and you can read for yourself the rather dismissive response I received from the board vice chair and I quote. Oh, come on, Eric, we don't have time for this. End of quote. Again, that I and the word signature is completely missing. And that's all I'm trying to do is explain that, uh, this transcript doesn't lie. And that's how I was treated here and what was told to me. Well, the bureau and the board, uh, had no time for this petition, but certainly made time for the five ACV petitions on attachment 13, all of which were deemed invalid. The third area of different treatment between ACV and MOP is, frankly, between ACV and any petition ever reviewed by the Bureau this year or otherwise. This occurred when the Bureau accepted a brand new challenge two full weeks after the challenge deadline. Um, and attachment 15, which I got a it's on the, on the slide now is just a Michigan Supreme Court order. So you understand what we're talking about here, which holds that the Board of State canvassers may not invalidate a petition based on a challenge filed after the challenge deadline. No dispute there. Uh, attachment 16 in your packet. Also put forth here on the next slide is the petition manual page, which defines what a challenge actually is according to page 28 of the petition manual. And I quote, the challenge must specify each signature being challenged and the reason why the validity of the signature is being questioned.

[02:59:33] Eric Doster

End of quote. Because the reason is part of a challenge. This definition makes it abundantly clear that adding a new reason or reasons later means that a new challenge is being made. The best way to determine what happened here is to go right to the, uh, Bureau supplemental review, which again, you have it as attachment four at the top of page nine. We received again this document at 545, uh, on Sunday night for the next morning's hearing, and and you please go to the top of page four. And this is all you need to know. It's right here in the in the Bureau staff review. Um, talking about sheet 68652 this signature and I'm reading right from the staff report. Uh, staff review this signature was originally challenged as Neyer meaning not registered slash I I meaning illegible. And staff rejected the challenge on that basis in PTV. Ptv was the challenger in TVA's response to the staff report made two weeks after two weeks after the challenge deadline, PTV alleges that this is actually a registered voter. Then it's a duplicate. Same thing with the next signature sheets. 5 or 8 5835. This signature was originally challenged as Nr not registered and staff rejected the challenge on that basis. In Teva's response to the staff report, again two weeks after the challenge deadline. Ptv alleges that if this is actually a registered voter, then it's a duplicate.

[03:01:15] Eric Doster

Um. In other words, when the challenges to these signatures were made prior to the challenge deadline, nowhere was there a challenge based on these signatures being duplicates. And the challenger here, PTV does not hide the fact that this is a new challenge. Attachment 17 is where the challenger submitted again two weeks after the challenge deadline of August 7th. These new challenges and as you will notice on the last page of this attachment, again, I've reproduced it on this slide. The challenger even refers to these new challenges as, quote, new duplicates. End of quote. Um, so no one is hiding the fact that these are new challenges filed two weeks after the challenge deadline, but somehow these new challenges were accepted by the Bureau and cost a CV. Two additional signatures. The final area of different treatment between a CV and MOP that I will address here relates to the acceptance of materials at the hearing itself. And one of the critical issues that that the Bureau was that the Bureau determined that 94 signatures of the 1000 signature sample were invalid because the petition signatures did not match the signatures on file in the qualified voter file. I'm not going to address unless you folks want to ask me questions afterwards the propriety of these determinations by laypeople with no handwriting expertise, looking at a screen at a signature that could have been signed decades ago, and attempting a comparison to a recent petition signature that was likely scratched on the clipboard.

[03:03:02] Eric Doster

Again, my goal here today is to address the different treatment between ACV and MOP. And because ACV was denied access to even seeing the UVF signature file to rebut these signature invalidations, our only option available was to obtain affidavits from the voters who signed these petitions. And these affidavits basically said, yes, I signed this petition. Remember, an affidavit is signed in the presence of a notary who checks the signers identification, and the person signing, uh, does so under penalty of perjury. Significantly, at the August 24th ACV hearing. And I don't think I have to belabor this point because because it was talked about earlier by the canvassers that the reason why these affidavits weren't accepted was based on the this 48 hour rule, which frankly, doesn't apply to my client. And forget the fact that ACV was not a member of the public, uh, subject to the rule, which only applies to, and I quote members of the public close quotes. According to the rule itself, ACV was a sponsor, which is a completely different category under these boards procedural rules that precluded the acceptance of these affidavits. Again, my goal today is to address the different treatment between ACV and MOP. And at the July 24th MOP hearing, the board reviewed, uh, over 40 petition signatures to determine whether the MOP petition would be certified significantly at the July 24th MOP hearing.

[03:04:48] Eric Doster

Mop submitted for the first time detailed rebuttal materials relating to these 40 plus petition signatures, and this document is set forth in attachment 19 of your packet. And I'd like you to notice the date in the upper left hand corner. It's a date of July 24th, 2026, the date of the hearing. And when Omop submitted these materials, the board accepted them. The bureau accepted them, and I, as opposing counsel, accepted them. Because this 48 hour procedural rule does not apply to a petition sponsor. The next slide, and again, I'll refer you to attachment 20, which is the last attachment in your packet. It's a partial transcript of this board hearing. And you can see where the mop counsel repeatedly refers to the quote handout I passed out this morning. End of quote. Throughout this hearing. So at this July 24th mop hearing. Mop was allowed to present a detailed rebuttal. Detailed materials argument, written argument. When ACV was denied this very same opportunity just a month later at the August 24th ACV hearing. So if you're keeping track of where I've come so far, if the same standards and procedures apply to ACV as they did to MOP, just with respect to these four categories alone, ACV would have been credited with 14 more petition signatures. So instead of missing certification by three signatures, ACV cleared certification just in the four areas I mentioned today by double digits. And with that, I'm happy to answer any questions that this committee may have.

[03:06:42] Chair Mike Harris (R)

Thank you. And it's, uh, it's a lot to digest, and I would encourage everyone to take some time and go through your your amendments that you added to because my eyes aren't as good as they used to be. Digging into the small text as is definitely a little harder, so I understand. I just have to throw this at you, and I know it's probably it's not going to necessarily the order in which your presentation went, but we just heard testimony about what the public is defined as. Right? And, and how this 48 hour hour rule applies. And I believe we heard Vice Chair Gurwitz make mention that the public would include the bill sponsors and basically anybody except for the folks on the board and the bureau and whatnot. But anybody else would kind of be the public. If if that's accurate, then how did this public issue not apply to what you're saying got turned in? I'm just going back to the right page here. I think on second or third to last page.

[03:07:56] Eric Doster

Oh, you talk about the the map.

[03:07:59] Chair Mike Harris (R)

The rebuttal handout that was accepted on the date of the hearing. Correct. How, if, if you guys are deemed the public and we don't accept public information within that 48 hours, how is this being accepted on the date of the hearing?

[03:08:13] Eric Doster

Well, I I'll I'll defer that question to the board and the bureau. But but, uh, again, my, my point here is that that it was a different standard that was applied because clearly Map was allowed to present a heck of a lot more details, uh, than, than, than five cookie cutter affidavits that said that I signed the petition. It takes two seconds to read that. So I don't, I didn't under, um, but, but it doesn't when, when vice Chair Gurwitz was talking about, she referenced rule six and rule six applies to members of the public. There's a public comment section, and like they're subject to the Open Meetings Act, there's a public comment. Those are the those are the members of the public in that public comment section. I am applied by a different rule. I'm either a sponsor or a challenger. And and they're addressed under rule four of the board's procedural rules. And according to the 48 hour rule there. It says that again, it doesn't apply because I wasn't served with notice of hearing, but it says I may file a written argument. I'm only precluded from filing written argument. Um, 48 hours before the day of the hearing. This wasn't written argument. These were affidavits of, of voters that said, hey, and remember our, our compressed timeline here too. I mean, let's look at the justice of all this. The compressed timeline is on. On August 17th, we received a staff report that said that there were 94 um, 94, uh, signatures that did not, uh, that we determined that didn't sufficiently, uh, agree to the qualified voter file.

[03:09:58] Eric Doster

Again, we can't see the qualified voter file. Um, so our only recourse is to get, uh, affidavits from signatures from voters. So that's not an easy task. Uh, and to get as many as we did, uh, in that short amount of time, frankly, heroic. I wasn't the one responsible for that, by the way. So I'm not patting myself on the back. I'm patting others that, that undertook that endeavor. Um, and, and yet, so when these voters took the unprecedented step of getting a signed affidavit showing their identification, signing under penalty of perjury, that yes, this was my signature on, on, on this petition. Uh, and, and, and yet those were denied. Uh, I don't have an answer for you, chair. I it a the procedure rule didn't apply to us, and it certainly didn't apply to mop a month before. Uh, but but be how you would rely on some tortured, uh, interpretation of, of procedural, uh, of a procedural rule, uh, to deny voters coming forward and saying this was, I'm participating in the democratic process here and I only signed the petition. I'm telling you again, under the penalty of perjury, I signed this petition. And, and, uh, so I hope that's an answer to your question. It's the best one I have.

[03:11:26] Chair Mike Harris (R)

Yeah. Well, I know we had you sit here for like 2.5 hours already, and I don't know if you you caught this piece, but, um, were you present when they allowed a notary to come in and testify within that 48 hour rule? Yes. And I'm not saying they're wrong in doing that, but my question is, if we're going to allow a notary to verify their own signature and stamp, why aren't we allowing the voters?

[03:11:52] Eric Doster

That's exactly right. And that's exactly what happened. Um, and as Vice Chair Gurwitz indicated, uh, she was correct. She voted against that. She if you go back and look at the tape, the vice, the vice chair didn't want that person to testify. So at least she's consistent there. But but, uh, yeah, but this lady came and, uh, and, and was asked a few very pointed questions by the board. And, and they did vote to accept that affidavit, uh, on that basis.

[03:12:21] Chair Mike Harris (R)

Awesome. Thank you. Uh. Rep Xiong.

[03:12:26] Rep. Mai Xiong (D)

Thank you chair. Thank you so much for your testimony, Mr. Doster. While I appreciate the transcripts and evidence that you've presented to us, I don't believe in relitigating this particular petition when the courts have already decided. And I heard that you said you're looking for justice. So my question to you is, do you respect the decisions of the higher courts?

[03:12:47] Eric Doster

I didn't say I don't recall saying that I was looking for justice, but.

[03:12:52] Rep. Mai Xiong (D)

But you did use that word.

[03:12:53] Eric Doster

Oh, I did. I. Okay. I don't recall, but that's okay. I'm always looking for justice. All right. So the courts let's be clear what the courts ruled and what the courts didn't rule. Uh, when the when the courts were asked to review this situation, you filed what's called a writ of mandamus and the writ of. And we did we did file one with the the Michigan Supreme Court and and were denied the writ of mandamus, uh, a writ of mandamus when it was denied. Didn't say what the board and the Bureau did was proper. They said the writ of mandamus was denied. The courts in this state historically will not tell the bureau or the board how to do their job. Okay. They'll they'll they. And if you go back and read that Supreme Court order, they said you got all the due process you were entitled to, you had a hearing. You had an opportunity to speak. Okay. Um, they're not they didn't go to any of the detail that I just went before this committee. Okay. They, they were not that granular. It was just like a 35,000 foot level. Did you have the hearing? Were you allowed to speak? Yeah, I was allowed to speak. Um, so I, yeah, I understand why the courts ruled the way they did, but please don't misinterpret what the court ruling said. It didn't say yes, that it was okay to, uh, uh, you know, to, to, to bring in these later challenges. Yeah. It was okay to say that, that, that where I could see letters sticking out of a, on a petition, a petition or additional word that that somehow was okay. That's not what the court said. They said you got your hearing and the writ of mandamus was denied. So anyway, I just wanted to clarify that that that don't put too much in what they said.

[03:14:50] Rep. Mai Xiong (D)

Thank you. My follow up to that is, are you familiar with the recent bridge article where they reviewed disqualified petitions since 2019? And of those six, four of them were supported by left leaning organizations, while two were supported by right leaning. So your argument about the board being biased, you haven't presented any evidence overall that the board is biased.

[03:15:17] Eric Doster

Well, let me let me let me um, let me clarify here. A, I haven't read that article and I don't doubt that that's what happened. But I've never used the word bias, although I may have used the word justice, I did not use the word bias here. I completed my my presentation today was completely devoid on purpose of any kind of subjective insinuations or anything like that. I'm giving you as facts. You've got all the attachments I read from the attachments. I showed you what the petitions were deemed invalid versus valid. Um, so I'm not, I'm not using the word bias and I'm not going to use the word.

[03:15:56] Rep. Mai Xiong (D)

Bias, just follow up. But you did say that the board treated the two petitions differently.

[03:16:01] Eric Doster

Absolutely.

[03:16:02] Rep. Mai Xiong (D)

So what would you how would you define that?

[03:16:05] Eric Doster

Then you define it as you will. I'm just saying that there were two different standards.

[03:16:09] Rep. Mai Xiong (D)

Thank you for your clarification. Thank you chair.

[03:16:12] Chair Mike Harris (R)

Welcome. And just to clarify, I didn't take I didn't take any definition from you on where you felt on either other than you were hired to do a job to represent either for or against one of those. Right. It's, um, I think we have to make sure we're putting in this perspective and I would have stopped you because I think you and I had a prior conversation, as we're not looking to judge the worthiness of us, the intent behind the ballot initiatives, but we want to understand the process, how things are treated fairly unfairly, how we can look at differences between the ballot initiatives. And I'm not going to let anyone play political games on this, but what we're going to look at is addressing the policy procedures and especially the subjective rule making, I think, of the board and the bureau. So thank you. Um, Rep Smith.

[03:17:11] Rep. Rachelle Smit (R)

Thank you, Mr. Chair, and thank you, Mr. Doster, for being here. Um, and bearing with us for this long committee hearing. I, I will follow up with a question, but I would like to make a couple statements first. This what I do appreciate you coming before us today and laying out the facts and the evidence of what took place in the vast differences between these two, um, petitions in the process, in that. And to me, it's unfathomable the treatment of, of what took place here after, after seeing this evidence and I've heard about it, I watched a lot of the testimony, but I mean, just again, walking through this in the steps that you laid out to us, it is truly unfathomable. But I guess not. When our chief election official, um, this is how she operates. And clearly her administration did not want to see this get on the ballot this November. To me, in my opinion, that's what's been made very clear. Um, and that's a shame because this should not be a partizan issue. Um Well over 80% of the people, um, would support this. So I just want to thank you for your, your time here this morning. And I will give a question because that is what we're supposed to do here. Are there any statutory or procedural changes that would most improve the fairness or accuracy of this petition review process that you could provide this committee?

[03:18:58] Eric Doster

Uh, I think that. The one that jumps out, representative is I, the, the, the, this review of comparing the qualified signature file signatures to that on the petition. Remember the qualified the signatures on the qualified voter file. Uh, yeah. I mean, I don't know about you, but I probably signed that driver's license thing 30 years ago. 40 years ago? I don't know. I'm in my 60s now. God, it could have been 40 years ago. I signed this darn thing. My. I'm assuming my signature has changed. My hands aren't as steady, I get that. And then you compare that to, I think the chair. How's camp was talking about your. You're walking out of the grocery store and you. And you sign and scratch it on a clipboard and you're comparing that screen notification and, and remember, the standard here is any redeeming quality and, and, and with all due respect to what director Brater said, his staff aren't handwriting experts. He dodged that question. He said they have training the same kind of training you give clerks. But but but, uh, these aren't handwriting experts. And and and as chair horse camp's testimony indicated where he looked at the same 94 and came up with a whole different number than the 94. I think he was like he thought there was at least 25 or maybe 30. I'll leave his testimony to what it was, but of what he thought was accurate.

[03:20:37] Eric Doster

And I guarantee you that if you took all of us here and you looked at it and you. Because remember, the standard is any redeeming quality. Okay. Um, and remember how I started this whole conversation? Signatures have to be presumed valid. And that's what they said about Emma and I. Okay. I don't disagree with that statement. Even though I was in opposition to that when they when they made that ruling against me for the out of state Wickman circulators. So in answer to your question, after giving you all that background, I would. To take the Partizanship or maybe get some add some validity to this process, have those Cvvhf signature determinations made by, um, handwriting experts. Um, we had a handwriting expert, and we brought him before the board for that hearing, but he might as well have been a potted plant because they not only did they totally ignored his discussion on handwriting experts, but also date things. Um, so have have. Okay. To make this completely nonpartizan. Have the two Democrat canvassers pick a handwriting expert. Have the two Republican canvassers pick a handwriting expert. I bet you 99 times out of 100 they will agree. But in that one time out of 100, they don't agree. Then they pick a third one. And then that handwriting expert makes the call on these. Okay. That would help us because that because 94 out of 1000 that that's the that you know, 94 of our 1000 sample was was deemed to be not under that basis.

[03:22:14] Eric Doster

So, uh, that that would help. The second thing is, and this is nothing that I haven't said before, the board of canvassers for I don't know how many years now. Uh, I got to have access to the UVF signature file. So. And then. And then what always gets put back at me is, well, okay. Um, you you you can't because you're not an election official. Um, and by operation of state law and the federal driver's license laws, you're not an election official, so you can't have it. Well, who defines what an election official is? I thought the legislature might have a say in that. Why not make, um. Why not make challengers and sponsors? Okay. Because remember, I'm on both sides and I'd like to see the UVF signature file. But again, I'm not going to look at the UVF signature. Why? Why are the privacy concerns. Well, so I don't go sell someone's signature and they get credit card applications the next day or, or, you know, I start, you know what I'm saying? I mean, um, so why not make challengers and sponsors election officials for the purposes of these statutes that and, and I and I've done this before with the Bureau where I've been allowed access to like, uh, petition signatures. You know, I sign a paper.

[03:23:29] Eric Doster

They didn't make me do it this cycle. But in cycles past, I've had to sign a paper saying, you know, you're not going to mark on any petition, you're not going to do this, that and the other thing. And, and if you violate this, you get your third born. And I'm and I'm happy to sign that, okay? Because I'm, you know, because when I do look and, and I do appreciate the staff allowing me to come and look, um, you know, I make sure that there are no pens in my possession. Um, and if I do have to write something, I walk out of the room or I walk to a corner of the room and make notes, but I'm nowhere. So you could do the same thing here. I could be, you know, they could put up a screen like they did for, for chair Horse Camp and presumably for Vice Chair Gurwitz that they allowed them to look at a screen, um, right there on site and, and do that. So, so those two things I would have experts make because these are critical determinations. I mean, 94 a CV missed by three, supposedly. Okay. I say they cleared by double digits, but that's neither here nor there today. And I'm not relitigating. Um, so, uh, so those two things would be what I would suggest that you'd look at.

[03:24:39] Rep. Rachelle Smit (R)

Thank you very much.

[03:24:45] Chair Mike Harris (R)

Uh, representative Bollin.

[03:24:47] Rep. Ann Bollin (R)

Uh, thank you, Mr. Chair. Thank you very much, Mr. Doster, for being here. Excuse me. Uh, I appreciate your insight and also your experience. You have a lot of credentials when it comes into this space. And I have a couple of questions. Uh, this was not my first question, but since you said when you go in and you look at it and you don't have your pen and stuff, as a former FOIA coordinator, I very much appreciate that. But did somebody sit with you in witness? You okay?

[03:25:14] Eric Doster

Absolutely. 100% of the time. Uh, and And I will not be with a petition unless there is a staff person. And that's both ways. That to me protects me when I'm there. And thankfully, the staff has been accommodating. Uh, and we appreciate that. And yeah, I've had like 2 or 3 people will be there, no pens and we'll look at petitions and things like that. Yes, they are absolutely there.

[03:25:37] Rep. Ann Bollin (R)

Okay. So you have, um, like I mentioned, you have a lot of experience in, um, this space. And so I'm wondering if you could maybe identify a few ways in which the timing or receipt of petitions versus review of them. Um, the sampling and then, uh, you know, the signature review has changed. Like you've, you know, done this more than once. Are there particular time, have there been significant changes at one time? Did it work better?

[03:26:11] Eric Doster

I, I don't think it's really changed all that much. I think the time periods have have been pretty constant. Uh, I, I will, I'm not concerned about the sampling process. I know that me, I, to me, I understood why the Bureau did it. And I've gone on record saying why that it was, uh, that I understand, uh, the, the two stage certification and why we don't have time. I mean, but everyone always complains about the time. There's just not enough time. Well, we could always back that time up. I mean, we could we could fix that real easy. Uh, in the Supreme Court order that was just issued, uh, Michigan Supreme Court, they talked about the timing. Um, and they implored the legislature to look at the timing. Well, yeah, we could do that. But frankly, the timing here wouldn't have affected any of my presentation today. Um, frankly, neither. Because when I'm talking about the different standards and frankly, this discussion that I heard today about strict compliance versus substantial compliance wouldn't have affected one screen slide on my presentation today. Um, because none of those would have been deemed to be substantially compliant. So I mean, we can talk about substantial substantial versus strict, but.

[03:27:35] Rep. Ann Bollin (R)

I have my opinions on strict compliance.

[03:27:37] Eric Doster

As well. I'm not going to get into. That's up to you all I and others. But I'm just saying that I don't want I don't want that red herring to be out there because it would not have affected one slide of my presentation today.

[03:27:51] Rep. Ann Bollin (R)

Well, it does appear as though, uh, different rules were applied, uh, you know, in the same time period. And that is a great concern. But, um, I also think that the department has the obligation and responsibility to plan accordingly, you know, when filing deadlines are and, you know, these petitions are out and, uh, it is not unheard of to bring in temporary help or to shift people in the Department of State. I know it happens at least in every two year cycle, when you have to re credential every single clerk in the state. So, um, you know, just would be interested in your.

[03:28:27] Eric Doster

I really don't have a thought on that. I mean, that's, that's really an internal Bureau of elections staff allocation issue. I do know that, you know, with respect to candidate challenges this year, uh, again, I didn't sit there and I may be wrong. I may be wrong, but I thought that candidate challenges this year were down. Um, uh, because I know that there were only two, there were only two challenges filed, uh, Johnson versus James and James versus Johnson at the governor's side. There were no Senate challenges filed that I recall. So I think they're candidate challenges were down this year. Um, from what we normally see. So they, I don't know, maybe I'm wrong on that. And and. Mr.. Mr.. Brady will come back and say no, no, no, they were same as current levels, but to me they seem down.

[03:29:22] Rep. Ann Bollin (R)

Yeah. And, uh, I believe that the signature, your signature has to be updated now every 12 years, but I know there is, there are some bills.

[03:29:30] Eric Doster

So maybe I only signed.

[03:29:31] Rep. Ann Bollin (R)

That.

[03:29:31] Eric Doster

I think. Okay.

[03:29:33] Rep. Ann Bollin (R)

And yeah.

[03:29:34] Chair Mike Harris (R)

Rep Bollin, I don't mean to cut you off. Um, we're going to go at ease for a short time, uh, sessions getting ready to start. So we're going to take a quick little break and then we'll come back if you need to finish up committee, I'll go. We're not watching the game.

[03:32:39] Chair Mike Harris (R)

You're in for one. Might as well be in for all of them.

[03:34:30] Chair Mike Harris (R)

Be pretty.

[03:34:33] Eric Doster

I understand you got it. Yeah.

[03:36:58] Chair Mike Harris (R)

Come back to order. All right. Uh, rep Bollin stepped out for a moment. We'll come back to her. Uh, vice chair Mentzer, if you have a question. Still.

[03:37:09] Vice Chair Denise Mentzer (D)

So approximately 510,000 signatures were gathered by paid canvassers. Or isn't that correct?

[03:37:17] Eric Doster

I'm sorry, I do not know that number. I'll accept your number. I do not know that. I'm just the attorney. I wasn't the petition gatherer.

[03:37:25] Vice Chair Denise Mentzer (D)

Um, so what I'm looking at is a couple of the the paid, you know, circulators, um, have some legal difficulties. Um, what is it? Diallo Danley was convicted in 2024 of there was fraud. He was named to the bureau's, uh, document petition sheets showing clear indications of fraud. May 24th, 2024. So I'm wondering who vetted the petition circulators, circulators, and why in the heck would you hire somebody who was already found guilty of petition circulation fraud?

[03:38:09] Eric Doster

Uh, I'm not the person to ask that question, but I'll if I could clarify, uh, there's a, there are a couple of different lists here, uh, about circulators. There's the one list that you talked about, uh, as far as where there's like been some suspicious or known activities, suspicious activities of fraud that the bureau has published over the years. And I don't doubt that you found someone that's on that list. But but there's also but they're still allowed to circulate in the state. Um, to be a circulator, there's only two people that the board has put on the no circulator list, and they did that, I believe, on the at the March 20th. It was earlier this year, and those were the two folks that were convicted of circulator petition fraud. So there's only two people that are on the you can't circulate in Michigan list. So there are other lists out there. Um, again, I hope that's an answer to your question. I'm not the, the, I didn't coordinate the circulators. Remember, I was hired just earlier this year, um, that most of their petition gathering was done in 25.

[03:39:28] Vice Chair Denise Mentzer (D)

Okay. Uh, I guess, uh. It's disappointing probably for, you know, we were talking about the 710,000 people that signed this. It's disappointing to think that, um, they weren't taken as important enough to hire petition circulators that hadn't already been accused of fraud, because that puts your circulation, your petitions, into some question. And we've heard all kinds of stuff about the sloppy signatures, the crayons, the missing, you know, data. Um, so it's, uh, I'm just going to say quite disappointing and disenfranchizing possibly to these voters.

[03:40:24] Chair Mike Harris (R)

So you mentioned a couple of this and I wasn't familiar that there's multiple lists out there. Do you have any idea? Are some like the two that you talk about? Are these people that have actually been convicted of a crime and then others maybe there's some accusations or whatnot that have.

[03:40:37] Eric Doster

That's my yeah, that's my yes. That the Bureau has again published. They did this a lot in 22, and I believe also in. 24 they came out with a list of these. These. These circulators have circulated petitions with suspected fraudulent activity. And but but again, those people are still allowed to circulate under the law. It's only those two people from earlier this year where the board affirmatively ruled unanimously, as I recall, that they they no longer were able to circulate in Michigan.

[03:41:16] Chair Mike Harris (R)

I gotcha. Thank you. Any other questions for Mr. Doster? No. All right. Well, Mr. Doster, thank you for all the information. Um, obviously, uh, as with everybody else that testified today. I'm sure folks can follow up with you if they have some info that they they want to obtain. But I appreciate all the the back and forth.

[03:41:52] Eric Doster

Okay. Thank you, thank you.

[03:41:59] Chair Mike Harris (R)

All right.

[03:42:03] Chair Mike Harris (R)

No. All right. Well, I guess with that, unless everyone wants to stay a little bit longer. Uh, no further business before the committee, and we will stand adjourned. Thank you.



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