



**House
Legislative
Analysis
Section**

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**PETITION CHALLENGES: BOARD OF
STATE CANVASSERS**

**House Bill 4601 (Substitute H-1)
First Analysis (6-11-03)**

**Sponsor: Rep. Edward Gaffney
Committee: Local Government and
Urban Policy**

THE APPARENT PROBLEM:

In the 2002 general election, then 60-year-old James A. Callahan filed petitions that placed his name on the ballot as one of 22 candidates seeking a judgeship within the 3rd Judicial Circuit Court in Wayne County. Callahan, a 31-year veteran attorney from Grosse Pointe, was one of two non-incumbent candidates hoping to be elected to one of the 20 circuit court judgeships that were filled in that election. Although the Michigan Supreme Court ordered that his name appear on the ballot, overturning a decision by the Michigan Board of State Canvassers, Callahan was not elected.

In order to be a candidate on the ballot, it was necessary that Callahan file petitions containing the signatures of 6,200 registered voters, and Callahan exceeded the minimum when he filed 6,317 voter signatures. However, Callahan's petitions were challenged in May 2002, within the seven-day statutory complaint limit, and a hearing before the board of state canvassers was scheduled in early June.

The challenge to Callahan's petitions was complicated by the fact that the challengers received nine sheets of petitioners' signatures just as the June meeting of the board of state canvassers convened (an acknowledged error by personnel at the Elections Bureau in the Department of State). A subsequent challenge concerning nine of those signatures was also registered with the board of state canvassers, just before their meeting convened, and after the seven-day statutory complaint limit had expired. The board eventually invalidated all nine signatures—three were not registered to vote, and six others had facial errors.

After investigating all of the challenges, the board of state canvassers certified only 6,196 of the voter signatures that Callahan filed—four short of the minimum number required. The board invalidated 121 signatures, many that were obtained outside the immediate presence of Callahan who apparently

circulated his own petitions at a gathering held on February 28, 2002. See Background Information below. Absent the minimum number of signatures, the board of state canvassers withheld Callahan's name from the ballot.

Callahan filed suit in the Michigan Court of Appeals, and subsequently filed application for leave to appeal their July 12, 2002 decision when a panel of the appeals court upheld the action taken by the board of state canvassers. *James A. Callahan v. Board of State Canvassers, Michigan Secretary of State, et al.*

The Michigan Supreme Court reversed the decision of the court of appeals on September 3, 2002, noting that the Michigan Election Law specified that "a complaint respecting the validity and genuineness of signatures on a petition shall not be acted upon...unless the complaint is received by the board of state canvassers within seven days after the deadline for the filing of the nominating petitions." Because the second challenge was filed after the deadline for its consideration, the supreme court ruled that it was an error for the board of state canvassers to consider the complaint that challenged the validity of the nominating signatures, and ruled the board had improperly withheld Callahan's name from the November 2002 ballot.

As a result of this case, legislation has been proposed to give the board of state canvassers more discretion to hear petition challenges, in order that they might consider untimely, but perhaps meritorious, complaints, and also invalidate petitions for facial errors prior to their vote to certify those petitions.

THE CONTENT OF THE BILL:

House Bill 4601 would amend the Michigan Election Law to enable the board of state canvassers to extend the seven-day challenge period to nominating petitions, in order to investigate a complaint about the

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validity of signatures on a petition, and to consider certain deficiencies found on the face of a petition.

Currently under the law, a county clerk or the board of state canvassers can receive sworn, written complaints questioning the registration or genuineness of the signatures on nominating petitions, and investigate those complaints. When a city or township clerk is asked to compare signatures that appear on the petition with those on the registration record, they must make their reports to the county clerk within seven days. In addition, the current law specifies that the county clerk and board of state canvassers are not required to act on a complaint about the validity and genuineness of signatures on a petition, unless the complaint is received by the county clerk or board of state canvassers within seven days after the deadline for filing nominating petitions. House Bill 4601 would retain these provisions.

In addition, the bill specifies that if a complaint was received after seven days following the nominating petition filing deadline, then the board of state canvassers could, at their discretion, hold a hearing on, and conduct an investigation regarding the complaint. Further, the bill specifies that the board of state canvassers could extend the seven-day challenge period upon finding that a challenger had not received copies of all petition sheets requested from the secretary of state. However, in no event could the extension of the challenge deadline extend any other deadline under the section.

Under the law, when a hearing is conducted to investigate a complaint, the board of state canvassers may issue subpoenas and administer oaths. The board of state canvassers may also adjourn periodically awaiting receipt of returns from investigations that are being made, or for other purposes. However, the board of state canvassers must complete the canvass not less than nine weeks before the primary election at which candidates are to be nominated. House Bill 4601 would retain these provisions. In addition, the bill specifies that before making a final determination, the board of state canvassers could consider any deficiency found on the face of the petition that did not require verification against data maintained in the qualified voter file, or in the voter registration files maintained by the city or township clerk.

MCL 168.552

BACKGROUND INFORMATION:

Petition signatures in dispute. The judicial candidate Callahan's petitions were challenged at two hearings convened by the Michigan Board of State Canvassers. The first hearing was based on a challenge filed within the seven-day statutory complaint limit; the second hearing occurred to consider challenges received by the board after the seven-day limit had passed—challenges based upon the sheets of petition signatures made available to the challengers after the seven-day limit had expired. At the two hearings before the board of canvassers—one of which the board had no authority to convene under the law—Callahan assured the board members that he had witnessed all 121 of the voters sign his petition on February 28, although he was moving about the room when they signed. The board of state canvassers subsequently ruled that Callahan's argument was incredible, making the blanket assumption that none of the 121 signers affixed their signatures to his petition within his presence. Absent the minimum number of signatures, the board acted to withhold Callahan's name from the ballot. The board's action was upheld by the Michigan Court of Appeals, but then reversed by the Michigan Supreme Court which ordered that Callahan's name appear on the general election ballot.

FISCAL IMPLICATIONS:

No fiscal information is available.

ARGUMENTS:

For:

The board of state canvassers should have the discretion to extend the seven-day statutory complaint limit, in order to consider challenges to petition signatures that may be untimely, but meritorious. For example, in this case, staff in the Elections Bureau at the Office of Secretary of State made it impossible for anyone to object to signatures on nine petitions sheets within the statutory timetable, because the sheets were not available to challengers. Compliance was not possible for challengers. Although errors of oversight such as this one are very rare during the certification process, this legislation would enable the board to remove the bar on late complaints when doing so would better serve fairness.

The legislation also would give the board the authority to invalidate petitions for facial errors, at any time prior to their certification vote. Under the

bill, any deficiency found on the face of a petition that did not require verification from either the qualified voter file or from voter registration files could be considered.

Against:

The extension of the seven-day statutory limit could cause delays in the election cycle—pushing back other important deadlines that must be met in a timely fashion in order to print ballots.

Response:

The bill has been amended to specify that “the extension of the challenge deadline does not extend another deadline” under this section of the Election Law.

POSITIONS:

The Office of the Secretary of State supports the bill as amended. (6-10-03)

The Michigan Municipal League supports the bill. (6-10-03)

Analyst: J. Hunault

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