

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN

James P. Bolger,

Petitioner,

vs.

Civil Action No. 11- JB 1966 -AA

Hon. **CONRAD J. SINDT**

Calhoun County Board of Election
Commissioners,

Respondent.

Jason T. Hanselman (P61813)
Gary P. Gordon (P26290)
Attorneys for Representative James P. Bolger
Dykema Gossett PLLC
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9100

There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in this complaint.

**PETITION FOR REVIEW AND/OR APPEAL
FROM THE CALHOUN COUNTY BOARD OF ELECTION COMMISSIONERS'
DETERMINATION ON THE CLARITY OF RECALL PETITIONS**

NOW COMES Petitioner James P. Bolger (the "Representative"), by his attorneys
DYKEMA GOSSETT PLLC, and hereby petitions for review and appeals the Calhoun County
Board of Election Commissioners' (the "Election Commission") June 13, 2011 decision, and
states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Petitioner James P. Bolger is an individual and citizen of the state of Michigan, residing within Calhoun County, Michigan and is a duly-elected member of the Michigan House of Representatives.

2. Respondent, Calhoun County Board of Election Commissioners (the "Election Commission") is a commission created pursuant to MCL 168.23 and acting pursuant to MCL 168.951, *et seq.*

3. This appeal is brought pursuant to the Michigan Election Law, MCL 168.1, *et seq.*, specifically MCL 168.952(6).

4. This Court also has jurisdiction over the subject matter of this action because the plaintiff seeks the equitable relief of injunction and declaratory judgment. MCL 600.601 and MCR 3.310.

5. Because there exists an actual controversy otherwise within the jurisdiction of this Court, the Court has subject matter jurisdiction over the Representative's request for declaratory judgment. MCR 2.605(A).

6. Venue is proper before this Court pursuant to MCL 600.1621 and MCL 168.952(6) because the alleged unlawful acts and violations described herein occurred in the County of Calhoun, the County where the official whose recall is sought resides.

GENERAL ALLEGATIONS

7. On May 10, 2011, Autumn Smith (the "Petitioner") filed a petition to recall the Representative, who currently is the Speaker of the Michigan House of Representatives. Exhibit A.

8. On May 20, 2011, the Representative submitted written objections to the May 10, 2011 petition. Exhibit B.

9. On May 25, 2011, the Election Commission held a clarity hearing pursuant to MCL 168.952 and determined that the language submitted was not sufficiently clear under the standard set forth in MCL 168.952.

10. On May 26, 2011, the Petitioner submitted six documents purporting to include six versions of proposed language for a recall petition. Exhibit C. Although the petitions were on plain white paper rather than the form prescribed by the Secretary of State pursuant to MCL 168.952, the Clerk accepted the petitions for filing and scheduled a clarity hearing.

11. On May 31, 2011, the Representative, through legal counsel, submitted a letter to the Clerk explaining that, because the language Petitioner filed was not on the form mandated by the Michigan Election Law, the Clerk should have rejected, and should now reject, those forms. Exhibit D.

12. On June 1, 2011, the Petitioner filed six new petitions seeking to recall the Representative (the "Recall Petitions"). (See Petition 1 attached as Exhibit E, Petition 2 attached as Exhibit F, Petition 3 attached as Exhibit G, Petition 4 attached as Exhibit H, Petition 5 attached as Exhibit I, and Petition 6 attached as Exhibit J.) Although those petitions again did not comport with the statutory requirements or the form proscribed by the Secretary of State, the Clerk again improperly accepted the Recall Petitions.

13. On June 10, 2011, the Representative, through legal counsel, submitted written objections to the Recall Petitions explaining that the Recall Petitions did not comply with the

statute in that they were not clear and did not properly identify the title of office for which recall was sought. Exhibit K.

14. On June 13, 2011, the Election Commission convened a hearing to consider the clarity of the Recall Petitions. The Election Commission had previously advised that a total of ten minutes would be allowed for argument to challenge the clarity of the petitions—or 1.66 minutes per petition for the duly elected office holder to challenge the clarity of the petitions. See Agenda attached as Exhibit L.

15. Both in written objections and orally during the hearing, the Representative's legal counsel requested time additional to the ten minute limit. Exhibit K. The Election Commission Chair indicated that "he would enforce the limits."

16. Prior to making her argument, the Petitioner indicated that she was amending all of the Recall Petitions to change the title of office stated on each petition to the correct title—"Representative"—rather than "House District," as currently stated as the office title.

17. The Representative's legal counsel explained that the Michigan Election Law does not allow the Election Commission or the Clerk to amend petitions and suggested instead that the proper process is for the Petitioner to re-file proper petitions for the Election Commission's consideration. The Election Commission then consulted with the County's Legal Counsel, who indicated that there was no guidance in the recall statute and that he did not know the answer. The County's Legal Counsel indicated that the safest course would be for the Petitioner to withdraw the incorrect petitions and re-file proper petitions.

18. The Chair expressed concern that approval of more than one petition with similar reasons for recall (noting that all 6 pending petitions were similar), could result in more than one recall question appearing on the ballot, which would confuse the voters. He indicated that he would not vote for approval of petitions if more than one, with similar reasons, was submitted for approval.

19. After further discussion, the Chair adjourned the hearing to allow the Petitioner to decide whether to, in light of the discussion thus far, withdraw some petitions. Petitioner returned from the adjournment and indicated that she would withdraw all but Petitions One and Three.

20. The Clerk indicated that, if the Recall Petitions were approved as to clarity, the Clerk would work with the Petitioner to modify the Recall Petitions to meet the statutory format. The Election Commission subsequently voted unanimously to allow the Petitioner to amend the petitions and voted 2-1 that the Recall Petitions satisfied the statutory clarity requirements. The Chair indicated he deemed the Recall Petitions not clear because approving multiple petitions for circulation was inherently confusing for voters since it is possible that more than one question could thereby appear on the ballot.

21. On June 15, 2011, the Petitioner filed another petition to recall the Representative. Exhibit M.

22. The ‘provisions of the recall statute are mandatory in nature.’ *Noel v. Oakland County Clerk*, 92 Mich App 181, 189; 284 NW2d 761 (1979). They were not followed by the Election Commission. The actions of the Election Commission should be reversed for the following reasons—any one of which renders the Commission’s action invalid:

- a. The language of the Petitions lack clarity;
- b. The Commission accepted Petitions that were not submitted in the proper form;
- c. The Election Commission improperly allowed an “*ad hoc*” amendment of the Petition at the clarity hearing;
- d. The Petitions approved by the Election Commission were therefore not properly before the Commission due to the lack of notice required by MCL 169.952(3);
- e. The Commission violated due process by refusing to allow more than the equivalent of 1.66 minutes to address the clarity of each petition, and;
- f. Approving more than one petition will create confusion for the voters in the potential circulation of dual petitions and with potentially more than one question appearing on the ballot

23. Not only do the Election Commission’s actions violate the Michigan Election law and the Representative’s constitutionally protected rights, but the very composition and structure of the Election Commission violates Michigan law.

24. The Recall Petitions were wrongfully approved under Michigan law.

COUNT I

**VIOLATION OF THE SEPARATION OF POWERS
CLAUSE OF THE MICHIGAN CONSTITUTION**

25. The Representative incorporates the preceding paragraphs of this Petition as if fully restated herein.

26. Article 3, Section 2 of Michigan Constitution states:

The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

27. The Separation of Powers Clause of the Michigan Constitution requires that the three branches of government be kept distinct and that, unless an exception exists, one branch cannot encroach or aggrandize upon another branch.

28. The Election Commission is an executive branch public body.

29. The Election Commission is composed of three members—(1) the chief or only judge of probate of the county or probate court district; (2) the county clerk; and (3) the county treasurer. MCL 168.23.

30. A probate judge is a constitutionally mandated member of the State's judicial branch. Mich Const 1963, art IV, § 15.

31. The probate judge's role in the Election Commission violates of the Separation of Powers Clause because the probate judge, a judicial officer, is exercising extrajudicial power in an executive branch public body.

WHEREFORE, the Representative respectfully requests that this Court enter an order and judgment declaring that the composition of the Election Commission violates the Separation of Powers Clause of the Michigan Constitution pursuant to MCR 2.605 and asks that this Court enjoin the Election Commission pursuant to MCR 3.310 from further violating the Representative's rights by accepting or approving additional recall petitions related to the Representative.

COUNT II

**VIOLATION OF THE DUE PROCESS CLAUSES
OF THE MICHIGAN AND UNITED STATES CONSTITUTIONS**

32. The Representative incorporates the preceding paragraphs of this Petition as if fully restated herein.

33. The Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. US Const., Amendment XIV.

34. The Due Process Clause of the Michigan Constitution states:

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed. Mich Const 1963, art I, § 17.

35. The due process clauses of the United States and Michigan Constitutions require that the government provide citizens with notice and an opportunity to be heard before these citizens are deprived of life, liberty or property. US Const, amend XIV; Mich Const 1963, art I, §

17.

36. The Election Commission violated the Representative's substantive due process rights by accepting the Recall Petitions despite their defects.

DYKEMA GOSSETT A PROFESSIONAL LIMITED LIABILITY COMPANY, CAPITOL VIEW 201 TOWNSEND STREET SUITE 900 LANSING, MICHIGAN 48933

37. The Election Commission also violated the Representative's procedural due process rights by limiting the Representative's counsel to an unreasonably short time limit, ten minutes, to address six petitions.

38. The Election Commission did not provide adequate time to fully address the clarity of six separate petitions filed by the Petitioner and, therefore, deprived the Representative of his opportunity to be heard in a meaningful manner.

WHEREFORE, the Representative respectfully requests that this Court enter an order and judgment declaring that the Election Commission violated the Due Process Clauses of the Michigan and United States Constitution pursuant to MCR 2.605: (a) enter an order and judgment reversing the Election Commission's approval of petitions to recall the Representative; (b) enter an order and judgment declaring that the Election Commission violated the Due Process Clauses of the Michigan and United States Constitution; and (c) enjoin the Election Commission from further violating the Representative's due process rights.

COUNT III
VIOLATION OF FAIR AND JUST
TREATMENT CLAUSE OF MICHIGAN CONSTITUTION

39. The Representative incorporates the preceding paragraphs of this Petition as if fully restated herein.

40. Article I, § 17 of the Michigan Constitution of 1963 provides, in pertinent part, that "[t]he right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

41. The Election Commission's clarity hearing is an executive hearing under Article I, § 17 of the Michigan Constitution of 1963.

42. The Representative is an individual under Article I, § 17 of the Michigan Constitution of 1963.

43. The Election Commission treated the Representative unfairly and unjustly during the clarity hearing regarding the Petitioner's petitions by limiting the Representative's opportunity to a meaningful hearing then by amending the Petitioner's invalid petitions during that hearing to make them comply with applicable law.

44. Accordingly, the Election Commission's actions violate Michigan's Fair and Just Treatment Clause, Article 1, § 17 of the Michigan Constitution of 1963.

WHEREFORE, the Representative respectfully requests that this Court enter an order and judgment: (1) declaring that the Election Commission violated the Fair and Just Treatment Clause of the Michigan Constitution; (2) enjoining the Election Commission from further violating the Representative's rights by unfairly and unjustly treating the Representative; and (3) to reverse the Election Commission's determination at the clarity hearing at which the Election Commission unfairly and unjustly treated the Representative in improperly amending and approving the Recall Petitions.

COUNT IV

VIOLATIONS OF MICHIGAN ELECTION LAW

45. The Representative incorporates the preceding paragraphs of this Petition as if fully restated herein.

46. Chapter XXXVI of the Michigan Election Law implements the constitutional concept of recalling public officials and sets forth the process and procedures for doing so.

47. A petition for recall must “be in a form prescribed by the secretary of state.” MCL 168.952(2). The form prescribed by the Michigan Secretary of State requires a recall petition to provide the Title of Office for which the recall is being sought.

48. Additionally, MCL 168.952(1) states that “A petition for the recall of an officer **shall meet** all of the following requirements: (a) Comply with section 544c(1) and (2).” (emphasis added).

49. The Michigan Election Law describes the physical dimensions of the form and states that “The petition **shall be in the following form:**”

NOMINATING PETITION
(PARTISAN)

We, the undersigned, registered and qualified voters of the city or township of , in the county (strike 1) of and state of Michigan, nominate, , (Name of Candidate) , (Street Address or Rural Route) (City or Township) as a candidate of the party for the **office of** ,

..... ,

(District, if any)

to be voted for at the primary election to be held on the day of , 20

WARNING

A person who knowingly signs more petitions for the same office than there are persons to be elected to the office or signs a name other than his or her own is violating the

provisions of the Michigan election law.

Printed Street Address

Name and or Date of Signing

Signature Rural Route Zip Code Mo. Day Year

1. _____

2. _____

3. _____

4. _____

numbered lines as above

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is qualified to circulate this petition and that each signature on the petition was signed in his or her presence; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a qualified registered elector of the city or township listed in the heading of the petition, and the elector was qualified to sign the petition.

Circulator—Do not sign or date certificate until after circulating petition.

(Printed Name and Signature of Circulator) (Date)

(City or Township Where Registered)
[or, for petitions under section 482,
“(City or Township Where Qualified to be
Registered)”]

(Complete Residence Address (Street and Number
or Rural Route)

(Zip Code)

Warning-A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.

50. The Michigan Election Law mandates two required blanks to identify the office-- one for the “office” and one for the “district, if any.” MCL 168.952.

51. The instant Recall Petitions improperly define the “Title of Office” as “Michigan State House.”

52. There is no such public office as the Michigan State House, and there is not even a body called the Michigan State House.

53. The statutory language is mandatory as the Election Law provides that the petition **shall** comply with MCL 168.544. The **mandatory form** reproduced in the statute requires the Petitioner to identify **both** the office and the district.

54. Because the petitions do not meet these mandatory requirements, the Clerk and the Election Commission were required to reject all of the petitions submitted by the Petitioner as noncompliant.

55. Because the Recall Petitions did not comply with the mandatory form required by law, the Recall Petitions are unclear since the identification of the office must relate to the reasons for recall.

WHEREFORE, the Representative respectfully requests that this Court reverse and overrule the Election Commission’s decision and find that Recall Petitions were unclear and in violation of the Michigan Election Law.

COUNT V

MANDAMUS TO COMPEL THE BOARD OF STATE CANVASSERS

56. The Representative incorporates the preceding paragraphs of this Petition as if fully restated herein.

57. The Representative has a clear legal right to have the Election Commission comply with the Michigan Election law with regard to an attempt to remove the Representative from office.

58. The act of determining whether a petition complies with the basic requirements of the Michigan Election Law with regard to petition format are ministerial because the petition form is fully codified in the statute.

59. Because the Recall Petitions that the Petitioner submitted do not comply with the mandatory requirements of the Michigan Election Law, the Election Commission has a clear legal duty to reject those petitions as noncompliant.

60. The Representative has no other adequate legal or equitable remedy to obtain public referendum of the underlying matter.

WHEREFORE, the Representative respectfully requests that this Court enter an order compelling the Election Commission to reject as unclear the Recall Petitions because they are not in the proper form and are unclear.

COUNT VI

INJUNCTIVE RELIEF

61. The Representative incorporates the preceding paragraphs of this Petition as if fully restated herein.

62. As fully outlined herein, based on the numerous legal, equitable, and constitutional claims, the Candidate has a substantial likelihood of success on the merits.

63. Most notably, the composition of the Election Commission violates the Separation of Powers Clause under the Michigan Constitution because the legislature's inclusion of a member of the judicial branch on an executive branch commission performing executive branch functions violates the Separation of Powers Clause by requiring a member of the judicial branch to exercise powers properly belonging to the executive branch.

64. The Representative will be irreparably harmed if a Preliminary Injunction and/or Temporary Restraining Order are not entered. If allowed to proceed, these Recall Petitions will cause the Representative to expend resources to defend petitions approved by an unconstitutional commission. The purpose of the petitions approved by that unconstitutional commission is to recall the Representative from his position as a state representative, so the harm intended by the petitioner is irreparable and noncompensable.

65. Furthermore, the Commission's actions in both limiting the Representative's right to a hearing, allowing the clerk to modify statutorily inadequate petitions, and approving multiple petitions by one Petitioner to recall the Representative violates the Due Process Clauses of the Michigan and United States Constitution and the Fair and Just Treatment Clause of the Michigan Constitution.

66. The United States Supreme Court has held that, when reviewing a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable harm is mandated. *Elrod v Burns*, 427 US 347, 373, 96 SCt 2673 (1976). In other words, the violation of a constitution right is irreparable harm.

67. Probate Judge Jaconette perhaps best articulated the public interest element in explaining on the record that the Commission's actions in approving multiple petitions was

inherently confusing since it would be possible for more than one similar recall question to be placed on the ballot.

68. In addition to those reasons stated by the Probate Judge, confusion will be caused among the voters by the potential circulation of multiple petitions and the creation of an administrative morass for election officials.

69. Applying the Election Commission majority's logic (absent the vote of the Chair), the Michigan Election Law would permit the petitioner to submit a recall petition to the Election Commission for approval every day for the next 365 days. According to the Election Commission majority, they are powerless to limit the number of similar recall petitions submitted and must subject themselves and the Representative to a potentially endless cycle of clarity hearings during the next year even if the Election Commission continues to approve each petition.

70. In balancing the harms, the Petitioner certainly has the constitutional right to initiate the Representative's recall. The issue is whether the Petitioner has the right to submit dozens or hundreds of similar petitions, all of which can be simultaneously circulated potentially causing several questions addressing recall to be placed on the ballot thereby confusing the voters.

71. As long as the Michigan Election law provides for a mechanism to recall public officials, the Petitioner is not harmed by limiting the Petitioner to approval and circulation of one petition that is clear under MCL 168.952. The balancing harms weigh against, however, allowing the Election Commission to accept and approve endless petitions seeking to recall the Representative for similar grounds.

72. The Election Commission must be enjoined from approving petition after petition from the Petitioner to avoid confusion and to prevent the Petitioner from imperiling normal citizens who may not be able to differentiate between petitions in order to determine which they have already signed and, ultimately having similar multiple questions placed on the ballot. Neither situation is contemplated by Michigan Election law.

WHEREFORE, the Representative respectfully requests that this Court enjoin the Election Commission from accepting additional recall petitions from the Petitioner regarding the Representative.

COUNT VII

DECLARATORY RELIEF

73. The Representative incorporates the preceding paragraphs of this Petition as if fully restated herein.

74. The Michigan Court Rules state:

In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. MCR 2.605.

75. As the subject of the wrongly approved Recall Petitions, the Representative is an interested party.

76. There is an actual controversy between the Representative and the Election Commission concerning the legality of the composition of the Election Commission, the process by which the Election Commission amended the Recall Petitions during the clarity hearing, and the form of the Recall Petitions.

77. A declaratory judgment is necessary for the purpose of settling and affording relief from uncertainty with respect to the rights, status, and future legal relations between the Representative and the Election Commission.

78. The Representative seeks and is entitled to a declaration that the composition of the Election Commission violates the Separation of Powers Clause of the Michigan Constitution.

79. The Representative seeks and is entitled to a declaration that the composition of the Election Commission violates the Fair and Just Treatment Clause of the Michigan Constitution.

80. The Representative seeks and is entitled to a declaration that the Election Commission violated the Representative's Due Process rights under the Michigan and United States Constitutions.

81. The Representative seeks and is entitled to a declaration that the Recall Petitions are invalid and incapable of circulation.

WHEREFORE, the Representative seeks and is entitled to a declaration by this Court that the Election Commission violated the Due Process Clauses of the Michigan and United States Constitutions, and the Fair and Just Treatment Clause of the Michigan Constitution and that the composition of the Election Commission violates the Separation of Powers Clause of the Michigan Constitution.

REQUESTED RELIEF

WHEREFORE, the Representative respectfully requests that this Court enter one or more orders and judgments granting the following relief:

1. Reverse and overrule the determination of the Election Commission;
2. Enter judgment in favor of the Representative and against the Election Commission declaring that: (a) the Election Commission violated the Due Process Clauses of the Michigan and United States Constitution, and the Fair and Just Treatment Clause of the Michigan Constitution; (b) the Recall Petitions do not contain a clear statement of the reason for recall and, therefore, does not meet the requirements of MCL 168.952; (c) the Recall Petition is invalid and incapable of circulation; (d) the composition of the Election Commission under MCL 168.952 violates the Separation of Powers Clause (Article 3, Section 2) of the Michigan Constitution.
3. Compel the Election Commission to reject the Recall Petitions for failing to comply with the mandatory statutory requirements set forth under the Michigan Election Law.
4. Enjoin the Election Commission from approving further recall petitions until such time as the Michigan Legislature amends MCL 168.952 to provide for an Election Commission whose composition does not violate Article 3, Section 2 of the Michigan Constitution.

June 22, 2011

Respectfully submitted,
DYKEMA GOSSETT PLLC

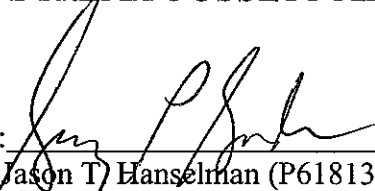
By: 
 Jason T. Hanselman (P61813)
 Gary P. Gordon (P26290)
 Attorney for Mr. James P. Bolger
 Dykema Gossett PLLC
 Capitol View
 201 Townsend Street, Suite 900
 Lansing, MI 48933
 (517) 374-9100

Exhibit A

INSTRUCTIONS ON REVERSE SIDE

RECALL PETITION

We, the undersigned, registered and qualified voters of the City of Township of } _____, in the county of: _____ of the State of Michigan,

petition for the calling of an election to recall JAMES P. BOLGER, from the office of MICHIGAN STATE HOUSE DISTRICT 63, for the following reasons:

James P. Bolger has proven himself unfit to represent the people of the 63rd Michigan House District, or to lead the Michigan House. He lead the vote for PA 4 of 2011, commonly known as the "Emergency Financial Manager Law" or "Financial Martial Law", which grants to State-appointed Emergency Financial Managers the power to invalidate, without court order, legal and binding contracts entered into by duly elected local authorities. He worked directly with Rick Snyder to promote bills that raise taxes upon retirees and lower income families, while cutting taxes on corporations and businesses. It is clear he does not work in the best interest of the people of Michigan, and must be fired.

WARNING - A PERSON WHO KNOWINGLY SIGNS A RECALL PETITION MORE THAN ONCE OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

Circ Use Only	Signature	Printed name	Street address or rural route	ZIP code	Date of signing		
					Mon	Day	Year
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

SPECIMEN - FOR CLARITY SUBMISSION ONLY

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is a qualified and registered elector of the electoral district of the official whose recall is sought, that each signature on the petition was signed in his or her presence, and was not obtained through fraud, deceit or misrepresentation, and that he or she neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once. The undersigned circulator of the above petition further asserts that to his or her best knowledge, information and belief each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a qualified registered elector of the City or Township listed adjacent to each signature, and the elector was qualified to sign the petition.

WARNING - A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR - DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING THE PETITION.

Signature of Circulator _____ Date _____

Printed Name of Circulator _____

City or Township and County where registered _____

Complete Residence Address (Street & Number or Rural Route) _____ ZIP _____

Exhibit B

1

FILED

2011 MAY 26 A 11: 55

May 26, 2011

CLERK - ELECTIONS
CALHOUN COUNTY, MICH.
ANNE S. NORLANDER

I, Autumn Smith, resident of the Michigan 63rd House District; wish to submit the following recall language for James P. Bolger, State Rep. of the Michigan 63rd House District.

James P. Bolger voted in favor of the "Local Government and School District Fiscal Accountability Act," also known as Public Act 4 of 2011" (formally, HB 4214). Public Act 4 of 2011 in Section 19 provides that a emergency manager may, "with approval of the governor, disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law. "

FILED

2011 MAY 26 A 11: 55

2

CLERK - ELECTIONS
CALHOUN COUNTY, MICH.
ANNE S. NORLANDER

May 26, 2011

I, Autumn Smith, resident of the Michigan 63rd House District; wish to submit the following recall language for James P. Bolger, State Rep. of the Michigan 63rd House District.

James P. Bolger voted in favor of HB 4214 (now Public Act 4 of 2011), the "Local Government and School District Fiscal Accountability Act." This Act in Section 19 permits State-appointed Emergency Managers the power to invalidate, without court order, legal and binding contracts entered into by duly elected local authorities.

FILED

2011 MAY 26 A 11: 56

#3

CLERK - ELECTIONS
CALHOUN COUNTY, MICH.
ALICE B. NORLANDER

May 26, 2011

I, Autumn Smith, resident of the Michigan 63rd House District; wish to submit the following recall language for James P. Bolger, State Rep. of the Michigan 63rd House District.

James P Bolger voted in favor of Public Act 4 of 2011, which grants State-appointed Emergency Managers the power to invalidate, without court order, legal and binding contracts entered into by duly elected local authorities. He also voted in favor of HB 4361 which will impose an income tax on some pensions of Michigan taxpayers.

FILED

2011 MAY 26 A 11: 56

#4

CLERK - ELECTIONS
CALHOUN COUNTY, MICH.
ALICE B. NORLANDER

May 26, 2011

I, Autumn Smith, resident of the Michigan 63rd House District; wish to submit the following recall language for James P. Bolger, State Rep. of the Michigan 63rd House District.

James P Bolger voted in favor of Public Act 4 of 2011, which grants State-appointed Emergency Managers the power to invalidate, without court order, legal and binding contracts entered into by duly elected local authorities.

FILED

2011 MAY 26 A 11:56

#5

CLERK OF THE HOUSE
OF REPRESENTATIVES
MICHIGAN STATE HOUSE
LANSING, MICHIGAN

May 26, 2011

I, Autumn Smith, resident of the Michigan 63rd House District; wish to submit the following recall language for James P. Bolger, State Rep. of the Michigan 63rd House District.

For voting what is now Public Act 4 of March 16, 2011, formerly house bills 4214-4218 and 4246 allowing emergency managers sole authority to remove local elected municipal government officials and elected school district board representatives from office.

FILED

2011 MAY 26 A 11:56

#6

CLERK OF THE HOUSE
OF REPRESENTATIVES
MICHIGAN STATE HOUSE
LANSING, MICHIGAN

May 26, 2011

I, Autumn Smith, resident of the Michigan 63rd House District; wish to submit the following recall language for James P. Bolger, State Rep. of the Michigan 63rd House District.

James P. Bolger voted in favor of HB 4361 which will impose an income tax on some pensions of Michigan taxpayers.

Exhibit C



Dykema Gossett PLLC
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933
WWW.DYKEMA.COM
Tel: (517) 374-9100
Fax: (517) 374-9191
Gary P. Gordon
Direct Dial: (517) 374-9133
Email: GGORDON@DYKEMA.COM

May 31, 2011

Teri S. Loew
Calhoun County Clerk's Office
315 W. Green Street
Marshall, MI 49068

Re: Representative Bolger Petition Format

Dear Ms. Loew:

I am writing on behalf of Representative James P. Bolger, 63rd District State Representative (the "Representative"), regarding proposed recall language submitted by Autumn Smith ("Petitioner"). As you know, to begin the recall process, "a petition for the recall of an officer shall be submitted to the board of county election commissioners of the county in which the officer whose recall is sought resides." MCL 168.952(2) (emphasis added). Furthermore, a petition for recall must meet all of the following requirements:

- (a) Comply with section 544c(1) and (2).
- (b) Be printed.
- (c) State clearly each reason for the recall. Each reason for the recall shall be based upon the officer's conduct during his or her current term of office. The reason for the recall may be typewritten.
- (d) Contain a certificate of the circulator. The certificate of the circulator may be printed on the reverse side of the petition.
- (e) Be in a form prescribed by the secretary of state. *Id.*

MCL 168.544c provides the requirements for petitions, including type font, mandatory language to be included on the petition, and other specifications. Taken together, to begin the process for recalling a public official, MCL 168.952 and MCL 168.544c require a petitioner to submit a "petition" in the form prescribed by the Michigan Election Law and the Secretary of State, setting forth the reason for recall.

DyKEMA

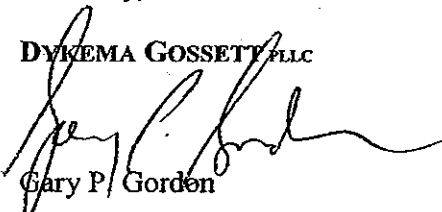
Teri S. Loew
May 31, 2011
Page 2

The document submitted by the Petitioner is not a **petition** in compliance with the Michigan Election Law and, therefore, does not provide a basis for initiating the recall process. As such, that document does not trigger a clarity hearing under MCL 168.952(3). To the extent your office already has scheduled that clarity hearing, it should be cancelled until such time as the Petitioner properly submits proposed language pursuant to the Michigan Election Law.

Recalling a public official is a drastic measure. Petitioner certainly has the right to undertake that process, but must do so in compliance with Michigan law. Thank you for your assistance with this matter. If you have any questions, please contact me.

Sincerely,

DYKEMA GOSSETT PLLC



Gary P. Gordon

cc: Michael L. Jaconette, Probate Judge
Anne Norlander, County Clerk
Ann Rosenbaum, County Treasurer
Autumn Rosanne Smith, Recall Sponsor
Representative James P. Bolger

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Exhibit D

INSTRUCTIONS ON REVERSE SIDE

RECALL PETITION

#1

We, the undersigned, registered and qualified voters of the City of _____, Township of _____, in the County of _____, and State of Michigan, petition for

City
Township of)
STRIKE ONE

the calling of an election to recall James P. Bolger, from the office of Michigan State House, District 63, for the following reason(s):

James P. Bolger voted in favor of the "Local Government and School District Fiscal Accountability Act," also known as "Public Act 4 of 2011"
(formally, HB 424). Public Act 4 of 2011 in Section 19 provides that an emergency manager may, with approval of the governor, disincorporate or
dissolve the municipal government and assign its assets, debt, and liabilities as provided by law.

WARNING — A PERSON WHO KNOWINGLY SIGNS A RECALL PETITION MORE THAN ONCE OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

FOR CLERK'S USE ONLY

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JUN 11 P 1:34
CLERK - ELECTIONS
JAMES BOLGER

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is a qualified and registered elector of the electoral district of the official whose recall is sought, that each signature on the petition was signed in his or her presence and was not obtained through fraud, deceit or misrepresentation; and that he or she neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once. The undersigned circulator of the above petition further asserts that to his or her best knowledge, information and belief each signature is the genuine signature of the person purporting to sign the petition; the person signing the petition was at the time of signing a qualified registered elector of the City or Township listed in the heading of the petition; and the elector was qualified to sign the petition.

WARNING — A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

(Signature of Circulator)

(Date)

(Printed Name of Circulator)

(City or Township Where Registered)

Complete Residence Address (Street and Number or Rural Route)

(Zip Code)

Exhibit E

INSTRUCTIONS ON REVERSE SIDE

RECALL PETITION

#2

We, the undersigned, registered and qualified voters of the City/Township of STRIKE ONE, in the County of _____, and State of Michigan, petition for

the calling of an election to recall James P. Bolger, from the office of Michigan State House District 63, for the following reason(s):

James P. Bolger voted in favor of HB 4214 (now Public Act 4 of 2010), the "Local Government and School District Fiscal Accountability Act." This Act in Section 19 permits State-appointed Emergency Managers the power to invalidate, without court order, legal and binding contracts entered into by duly elected local authorities.

WARNING — A PERSON WHO KNOWINGLY SIGNS A RECALL PETITION MORE THAN ONCE OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

FOR CLERK'S USE ONLY

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CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is a qualified and registered elector of the electoral district of the official whose recall is sought; that each signature on the petition was signed in his or her presence and was not obtained through fraud, deceit or misrepresentation; and that he or she neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once. The undersigned circulator of the above petition further asserts that to his or her best knowledge, information and belief each signature is the genuine signature of the person purporting to sign the petition; the person signing the petition was at the time of signing a qualified registered elector of the City or Township listed in the heading of the petition; and the elector was qualified to sign the petition.

WARNING — A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

(Signature of Circulator) _____ (Date) _____

(Printed Name of Circulator) _____

(City or Township Where Registered) _____

Complete Residence Address (Street and Number or Rural Route) _____ (Zip Code) _____

Exhibit F

INSTRUCTIONS ON REVERSE SIDE

RECALL PETITION

#3

We, the undersigned, registered and qualified voters of the City Township of _____, in the County of _____, and State of Michigan, petition for

the calling of an election to recall James P. Bolger, from the office of Michigan State House, District 63, for the following reason(s):

James P. Bolger voted in favor of Public Act 4 of 2011, which grants State-appointed Emergency Manager the power to invalidate, without court order, legal and binding contracts entered into by duly elected local authorities. He also voted in favor of HB 4361 which will impose an income tax on some pensions of Michigan taxpayers.

WARNING — A PERSON WHO KNOWINGLY SIGNS A RECALL PETITION MORE THAN ONCE OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

FOR CLERK'S USE ONLY

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FILED
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CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is a qualified and registered elector of the electoral district of the official whose recall is sought; that each signature on the petition was signed in his or her presence and was not obtained through fraud, deceit or misrepresentation; and that he or she neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once. The undersigned circulator of the above petition further asserts that to his or her best knowledge, information and belief each signature is the genuine signature of the person purporting to sign the petition; the person signing the petition was at the time of signing a qualified registered elector of the City or Township listed in the heading of the petition; and the elector was qualified to sign the petition.

WARNING — A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

(Signature of Circulator) _____ (Date) _____

(Printed Name of Circulator) _____

(City or Township Where Registered) _____

Complete Residence Address (Street and Number or Rural Route) _____ (Zip Code) _____

Exhibit G

INSTRUCTIONS ON REVERSE SIDE

RECALL PETITION

#4

We, the undersigned, registered and qualified voters of the City of Township of STRIKE ONE in the County of _____, and State of Michigan, petition for

the calling of an election to recall James P. Balaor from the office of Michigan State House District 63, for the following reason(s):

For voting in favor of what is now Public Act 4 of March 16, 2011, formerly house bill 4214-4218 and 4246 allowing emergency managers sole authority to remove local elected municipal government officials and elected school district board representatives from office.

WARNING — A PERSON WHO KNOWINGLY SIGNS A RECALL PETITION MORE THAN ONCE OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

FOR CLERK'S USE ONLY

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2011 JUN 1 P 1:34
MICHIGAN SECRETARY OF STATE
RECEIVED

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is a qualified and registered elector of the electoral district of the official whose recall is sought; that each signature on the petition was signed in his or her presence and was not obtained through fraud, deceit or misrepresentation; and that he or she neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once. The undersigned circulator of the above petition further asserts that to his or her best knowledge, information and belief each signature is the genuine signature of the person purporting to sign the petition; the person signing the petition was at the time of signing a qualified registered elector of the City or Township listed in the heading of the petition; and the elector was qualified to sign the petition.

WARNING — A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

(Signature of Circulator) _____ (Date) _____

(Printed Name of Circulator) _____

(City or Township Where Registered) _____

Complete Residence Address (Street and Number or Rural Route) _____ (Zip Code) _____

Exhibit H

INSTRUCTIONS ON REVERSE SIDE

RECALL PETITION

#5

We, the undersigned, registered and qualified voters of the ^{City} ~~Township of~~ ^{STRIKE ONE} _____, in the County of _____, and State of Michigan, petition for

the calling of an election to recall James P. Bolger from the office of Michigan State House District 63, for the following reason(s):

James P. Bolger voted in favor of Public Act 4 of 2011, which grants State-appointed Emergency Managers the power to invalidate, without court order, legal and binding contracts entered into by duly elected local authorities.

WARNING — A PERSON WHO KNOWINGLY SIGNS A RECALL PETITION MORE THAN ONCE OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

FOR CLERK'S USE ONLY

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CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is a qualified and registered elector of the electoral district of the official whose recall is sought; that each signature on the petition was signed in his or her presence and was not obtained through fraud, deceit or misrepresentation; and that he or she neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once. The undersigned circulator of the above petition further asserts that to his or her best knowledge, information and belief each signature is the genuine signature of the person purporting to sign the petition; the person signing the petition was at the time of signing a qualified registered elector of the City or Township listed in the heading of the petition; and the elector was qualified to sign the petition.

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CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

(Signature of Circulator) _____ (Date) _____

(Printed Name of Circulator) _____

(City or Township Where Registered) _____

Complete Residence Address (Street and Number or Rural Route) _____ (Zip Code) _____

Exhibit I

INSTRUCTIONS ON REVERSE SIDE

RECALL PETITION

#6

We, the undersigned, registered and qualified voters of the City of _____, Township of _____, in the County of _____, and State of Michigan, petition for

City
Township of)
STRIKE ONE

the calling of an election to recall James P. Bolger from the office of Michigan State House, District 63, for the following reason(s):
James P. Bolger voted in favor of HB 4361 which will impose an income tax on some pensions of Michigan taxpayers.

FOR CLERK'S USE ONLY

WARNING — A PERSON WHO KNOWINGLY SIGNS A RECALL PETITION MORE THAN ONCE OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

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CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is a qualified and registered elector of the electoral district of the official whose recall is sought; that each signature on the petition was signed in his or her presence and was not obtained through fraud, deceit or misrepresentation; and that he or she neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once. The undersigned circulator of the above petition further asserts that to his or her best knowledge, information and belief each signature is the genuine signature of the person purporting to sign the petition; the person signing the petition was at the time of signing a qualified registered elector of the City or Township listed in the heading of the petition; and the elector was qualified to sign the petition.

WARNING — A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

(Signature of Circulator)

(Date)

(Printed Name of Circulator)

(City or Township Where Registered)

Complete Residence Address (Street and Number or Rural Route)

(Zip Code)

Exhibit J

STATE OF MICHIGAN
COUNTY OF CALHOUN
ELECTION COMMISSION

**In re Petition for Recall
For the State Representative,
63rd District**

**Mr. James P. Bolger
Michigan State House Representative,
District 63**

Jason T. Hanselman (P61813)
Gary P. Gordon (P26290)
Attorneys for Michigan State House
Representative James P. Bolger
Dykema Gossett PLLC
Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9100

OBJECTIONS TO PETITIONS FOR RECALL

NOW COMES Mr. James P. Bolger (the "Representative"), by his attorneys DYKEMA GOSSETT PLLC, in support of the Representative's Objections to the Petitions for Recall filed by Autumn Smith (the "Petitioner"), states as follows:

INTRODUCTION

After the Calhoun County Election Commission (the "Commission") determined that the Petitioner's original petition to recall the Representative was not clear, the Petitioner submitted six new and different versions of a petition to recall the Representative (the "Recall Petitions"), however, because those Recall Petitions continue to favor rhetoric and hyperbole over fact, each

lacks clarity and must be rejected by the Commission. Claiming that the Representative voted for a bill to tax “some pensions” and to allow emergency managers “sole authority” to remove elected officials, the Petitioner filed reasons for recall for the office of 63rd District State Representative.

After failing to provide clear language during the previous recall attempt, Petitioner now has employed a “throw it to the wall to see what sticks” approach to finding recall language, however, it seems Petitioner is unwilling to use factual assertions in the current petitions, instead relying on misstatements and rhetoric to fill the gaps. Petitioner’s vague and confusing assertions fail to state with sufficient clarity the reason for the recall. Each proposed Recall Petition is ambiguous regarding the statements therein, employs terms without defining those terms or uses incorrect meanings, fails to set forth actions upon which a voter could form a judgment, misrepresents the law, and contains falsities. As such, the Recall Petition fails to meet the standards set forth by Michigan law. Certification of the Recall Petition as submitted would only serve to confuse voters and violate the Representative’s legal right to explain the Recall Petition’s allegations.

ARGUMENT

A. EACH OF THE RECALL PETITIONS FAILS TO STATE WITH SUFFICIENT CLARITY THE REASONS FOR RECALL

1. Statutory Standard

Through the Constitution, Michigan citizens expressed their desire to permit the recall of “all elected officers except judges.” Const 1963, art 2, § 8. Importantly, the Michigan Constitution provides that the Legislature must enact laws to carry out the Constitution’s

provisions. *Id.* Subject to procedural and substantive conditions, the Legislature provided the means for citizens to file recall petitions in MCL 168.951 *et seq.*

Pursuant to the Legislature's mandate, a petition for recall must contain clear reasons for the recall. Specifically, Michigan Election Law requires a recall petition to "[s]tate clearly each reason for the recall," and requires county election commissioners to "determine whether each reason for the recall stated in the petition is of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." MCL 168.952(3) (emphasis added).

The term "clearly" has been defined as "[v]isible, unmistakable, in words of no uncertain meaning." *Molitor v Miller*, 102 Mich App 344, 347 (1980) quoting Black's Law Dictionary (4th ed.), p 318. For example, as determined by the Court of Appeals in *In Re Wayne County Board of Election Commissioners*, 134 Mich App 158, 162 (1984), the Wayne County Board of Election Commissioners properly rejected recall language that simply stated "he voted to increase the state income tax." Instead, the Wayne County Board of Election Commissioners later accepted a recall petition that read: "He voted for passage of Michigan House Bill No. 4092, on March 24, 1983, increasing the Michigan state income tax rate from 4.6 percent to 6.35 percent for the year of 1983" *In Re Wayne County Board of Election Commissioners*, *supra*, 134 Mich App at 162.

Thus, Michigan law is clear—a recall petition is legally invalid unless it clearly explains the reasons for recall for three distinct reasons. First, so that registered voters in the district that are asked to sign the petition can identify the conduct cited and form an opinion regarding the necessity of a recall. Second, so that the officer may identify the conduct cited and defend him

or himself. Third, and most importantly, so that the voters when viewing the language on the ballot are able to determine without a doubt the specific conduct that is the basis for the extreme action of holding a recall election. If any portion of a recall petition is unclear, this Commission must reject that petition. Each of the pending Recall Petitions miss the mark under these standards.

2. Each Of The Recall Petitions' Lack Of Clarity And Blatant Misrepresentations Render Them Legally Insufficient Because They Do Not Explain A Course Of Conduct For Electors To Identify As The Basis For The Recall.

According to the Legislature's implementation of the Constitution's provisions, this Commission cannot approve a Recall Petition unless it is of "sufficient clarity to enable...the electors to identify the course of conduct that is the basis for the recall." MCL 168.952(3).

The specificity requirement exists "to prevent abuse of the elective franchise by ensuring deliberate and informed action by those called upon to sign the recall petition." *Noel v Oakland Co Representative*, 92 Mich App 181, 187-88; 284 NW2d 761 (1979), citing *Wallace v Tripp*, 358 Mich 668, 680-81; 101 NW2d 312, 315 (1960). Indeed, the statement for recall "must be such as will furnish information to the electors on which they may form a judgment when called upon to vote." *Noel*, 92 Mich App at 185. Further, the statements in a petition cannot be generalized—the language should list an officer's specific action at a specific event or time. *See, e.g., Dimas v Macomb County Election Comm*, 248 Mich App 624, 630; 639 NW2d 850 (2002).

Each of the currently submitted Recall Petitions is ambiguous and generalized. Each Petition lacks the requisite clarity for an elector to form an informed judgment, and, therefore, fails to meet the statutory standard. Their misleading language further exacerbates this fact and an examination of the language of each of the Recall Petitions illustrates this fact.

3. All Six Petitions Fail To Properly Identify The Title Of The Office And Fail To Comply With Mandatory Non-Discretionary Requirements Of Michigan Election Law.

To begin the process of recalling a public official, "a petition for the recall of an officer shall be submitted to the board of county election commissioners of the county in which the officer whose recall is sought resides." MCL 168.952(2). In addition to the requirement mentioned above that a recall petition state clearly the reason for recall, a petition for recall must also "be in a form prescribed by the secretary of state." *Id.* The form prescribed by the Michigan Secretary of State requires a recall petition to provide the Title of Office for which the recall is being sought. Additionally, MCL 168.952(1) states that "A petition for the recall of an officer shall meet all of the following requirements: (a) Comply with section 544c(1) and (2)." (emphasis added). MCL 168.544c(1) describes the physical dimensions of the form and states that "The petition shall be in the following form:": (emphasis supplied)

**NOMINATING PETITION
(PARTISAN)**

We, the undersigned, registered and qualified voters of the city or township of , in the county (strike 1) of and state of Michigan, nominate,

..... ,
(Name of Candidate)

..... ,
(Street Address or Rural Route) (City or Township)

as a candidate of the party for the office of

..... ,

(District, if any)

to be voted for at the primary election to be held on the day of , 20

WARNING

A person who knowingly signs more petitions for the same office than there are persons to be elected to the office or

signs a name other than his or her own is violating the provisions of the Michigan election law.

Printed Street Address

Name and or Date of Signing

Signature Rural Route Zip Code Mo. Day Year

- 1. _____
- 2. _____
- 3. _____
- 4. _____

numbered lines as above

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is qualified to circulate this petition and that each signature on the petition was signed in his or her presence; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a qualified registered elector of the city or township listed in the heading of the petition, and the elector was qualified to sign the petition.

Circulator—Do not sign or date certificate until after circulating petition.

(Printed Name and Signature of Circulator) (Date)

(City or Township Where Registered)
[or, for petitions under section 482,
"(City or Township Where Qualified to be
Registered)"]

(Complete Residence Address (Street and Number
or Rural Route)

(Zip Code)

Warning-A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.

As shown above, the Michigan Election Law mandates two required blanks to identify the office--one for the "office" and one for the "district, if any". Petition 1, and all petitions the Petitioner submitted, define the "Title of Office" as "Michigan State House." There is no such

public office as the Michigan State House and there is not even a body called the Michigan State House. The statutory language is mandatory and provides that each petition shall comply with MCL 168.544. The mandatory form reproduced in the statute requires the Petitioner to identify both the office and the district and the petitions do not meet these mandatory requirements.

Applying commonly used canons of statutory construction, “effect should be given to every phrase, clause, and word in the statute.” *See, e.g., Michigan Education Association v. Secretary of State*, 488 Mich 18, 793 NW2d 568 (2010). The plain language of the Michigan Election Law mandates including the “title of office” in a petition for recall, which the Petitioner has failed to include. The Commission must, therefore, reject all of the petitions submitted by the Petitioner due to the Petitioner’s failure to comply with mandatory, non-discretionary, and clear dictates of the Michigan Election Law. Recalling state elected officials is an extreme remedy and the Petitioner must be required to comply strictly with all requirements set forth in the Michigan Election Law in order to undertake that remedy.

A. Petition One Lacks Substantive Clarity and Must Be Rejected.

With regard to the substance of petition 1, Petitioner selectively quoted an excerpt of 2011 PA 4 out of context, keeping only the words from the statute that Petitioner apparently believes will confuse and upset voters enough to sign a petition. Certainly someone could use virtually any statute, select a few words from that statute and use those words as the basis for a recall petition. For example, under Petitioner’s strategy, a recall petition could state that the Legislature intended that “law enforcement...abuse...a...child...with...methamphetamine production.” MCL 722.6237. Although the full excerpt from that section requires law enforcement agencies to report abuse, partial sentences out of context can be manipulated for

virtually any purpose. Here, Petitioner's strategy simply makes the petition unclear and this Commission, must therefore reject Petition One.

B. Petition Two Attempts to Confuse Voters By Mischaracterizing Statutory Requirements.

The second petition states "This Act in Section 19 permits State-appointed Emergency Managers the power to invalidate, without court order, Legal and binding contracts entered into by duly elected Local authorities." Assuming "this Act" refers to the preceding sentence in the petition, Petitioner's claim is confusingly unclear because PA 4 of 2011 does not provide for an emergency manager to "invalidate" local government contracts and does not contain the word "invalidate."

The term "invalid" has a specific meaning and is defined as "[n]ot legally binding." Black's Law Dictionary (8th ed.), p 843. Additionally, the term "invalid contract" is defined as "[a] contract that is either void or voidable." Black's, p 346. Certainly PA 4 of 2011 does not establish that an emergency manager may void contracts or otherwise make legal contracts invalid or non-binding. Presumably, the Petitioner intentionally misused the word "invalidate" in an attempt to make 2011 PA 4 seem worse than it truly is. The difficulty, of course, is that the Petitioner's reliance upon intentionally confusing and unclear language to accomplish that goal causes the petition to fail to meet the minimum clarity requirements set forth in the Michigan Election Law.

Additionally, the phrase "without court order" appears designed to confuse voters into believing that 2011 PA 4 created a mechanism to circumvent a specific process in order to

invalidate. Petitioner likely recognizes, however, that parties to contracts often can terminate contracts “without court order.” Such power is not magical, nor does it connote the absence of a requirement that otherwise would be present. In most cases, the ability to terminate (not invalidate) a contract is a right that the parties to that contract already possess. Given the confusion caused by Petitioner’s misstatement of statutory provisions, this Commission must reject Petition Two as unclear.

C. Petition Three Mischaracterizes Legislation and Mis-states the Effects Thereof.

The third petition again relies upon the confusing concept that an Emergency Manager has “the power to invalidate, without court order, legal and binding contracts,” but adds “[h]e also voted in favor of HB 4361 which will impose an income tax on some pensions of Michigan taxpayers.”

As a threshold matter, it is unclear to which HB 4361 Petitioner is referring in this petition. It could be HB 4361 of 2009-2010, which dealt exclusively with tax issues. Or it could be HB 4361 of 2007-2008, a budget bill that dealt extensively with tax issues. Or it could be HB 4361, which dealt with nonnative species. In reviewing the petition language, it is unclear which version of HB 4361 the Petitioner finds objectionable.

Additionally, the phrase “some pensions” is not sufficiently clear to pass statutory muster because it is unclear which pensions constitute some pensions. The Petitioner must specifically define which pensions are objectionable to allow voters to make a determination regarding their support of the recall and to allow the Representative to exercise his constitutional right to defend himself.

Petition three also is misleading in its inaccuracy because it claims HB 4361 “will impose” an income tax. Of course, in 1967, the Michigan Legislature implemented a tax on the income of all Michigan taxpayers. Although special interest groups were able to achieve exemptions for certain types of income, income in Michigan generally is taxable. Although HB 4361 eliminated specifically earmarked exemptions, it is not accurate to state that the legislation “will impose an income tax” because that tax was imposed in 1967.

To properly effectuate a recall, the petition must clearly explain the Representative’s actions in a manner that voters and the Representative can understand rather than weighing the petition down with ambiguous rhetoric designed to mislead. More direct and concise language would allow the Representative to identify the action upon which the recall is based and would better allow voters to make a determination regarding whether recalling the Representative is appropriate. Because Petition Three fails to specifically identify legislation then mischaracterizes and misstates the effect of the legislation to which Petitioner appear to be referring, this Commission must reject Petition Three as unclear.

D. Petition Four is Unclear Because it Misstates Statutory Provisions.

Logically, a petition that is inaccurate is inherently unclear because it will not allow the average voter to understand the basis for the recall and it is impossible for the elected official to defend himself by proving a negative. Petition Four misstates the power given to emergency managers stating that the Representative voted for legislation “allowing emergency managers sole authority to remove local elected municipal government officials...from office.” Petition Four, emphasis added. It is unclear how 2011 PA 4 permits the removal of public office, particularly in light of the statute’s plain language, which specifically states that a financial

manager may not remove elected officials from office. See MCL 141.1519(1)(n) (emphasis added).

Contrary to Petitioner's implication, 2011 PA 4 also provides for emergency managers to work with local elected officials, stating that "[t]he emergency manager shall issue to the appropriate local elected and appointed officials...the orders the manager considers necessary to accomplish the purposes of this act." MCL 141.1517(1). It is evident that the Legislature did not permit emergency managers to remove local officials and instead directed emergency managers to work with those officials.

The petitions are further confusing when read in light of Article 7, Section 33 of the Michigan Constitution, which limits the manner in which local government officials may be removed from office. One such statutory mechanism by which to remove elected officials is through the recall process to which the Petitioner is availing herself to attempt to recall the Representative. The other is by petitioning to the governor for removal of a local official. MCL 141.1526(2). Because Michigan law limits the manners by which local officials may be removed, and the statute referenced in the petition specifically prohibits financial managers from removing local officials, this Commission must reject Petition Four as unclear.

E. Petition Five Contains the Same Infirmities as Petition Three.

Like Petition Three, Petition Five claims that 2011 PA 4 "grants State-appointed Emergency Managers the power to invalidate, without court order, Legal and binding contracts entered into by duly elected Local authorities." As explained above, nothing in 2011 PA 4 invalidates contracts and the word "invalidate" is not even used in the statute. Further, even the concept of invalidating, or rendering void, a contract, is not a power granted emergency

managers under the referenced bill. Again, because the Petitioner mischaracterizes the legislation, the Commission must reject Petition Five.

F. Petition Six Contains the Same Infirmities as Petition Three.

Like Petition Three, Petition Six states that the Representative “voted in favor of HB 4361 which will impose an income tax on some pensions of Michigan taxpayers.” Because it is unclear to which HB 4361 Petitioner refers and also is unclear regarding which pensions constitute “some pensions,” this Commission must reject Petition Six.

4. All of The Pending Recall Petitions’ Lack of Clarity and Misrepresentations Preclude the Representative from Identifying and Defending against the Reasons for the Recall.

Pursuant to MCL 168.952(3), a recall petition's stated reason for recall must also be clear enough so that the officer may identify the course of conduct that is the basis for recall. MCL 168.952(3). This requirement exists so that an official whose recall is sought receives an adequate opportunity to rebut the allegations. Indeed, the law must afford the public official who is the subject of the proposed recall minimum due process rights. *Noel*, 92 Mich App at 188. For this reason, if the recall election occurs, Michigan Election Law provides specifically that “the officer whose recall is sought, in not more than 200 words, may submit a justification of conduct in office.” MCL 168.966. As a result, a petition for recall must give an elected official “information from which to frame a proper response in support of his performance.” *Noel*, 92 Mich App at 188.

In *Noel*, the petition stated as the reason for recall “[i]ncompetence in administering his/her duties as an elected official and in a manner not conducive to the better interests of the residents of the City of South Lyon.” *Noel* at 187-188. In holding that such a reason did not satisfy the statutory requirement for clarity, the Court of Appeals noted that the purpose of the statutory clarity requirement was to “prevent abuse of the elective franchise by ensuring deliberate and informed action by those called upon to sign the recall petition, while at the same time affording the official sought to be recalled at least some minimal due process guarantees.” *Id.* (internal citations omitted).

For a number of reasons, all of the pending Recall Petitions fail to state clearly the reasons for recall so that the Representative may provide a justification. Specifically, the petitions appear to merge numerous legislative actions into one jumbled allegation. In only 200 words, the Representative cannot be expected to decipher incomprehensible rhetoric or otherwise guess what the Petitioner means in order to craft a response to each of the petitions. It is impossible for the Representative to deny or admit his actions when they are not defined by the Recall Petitions’ language. For all of the reasons stated above, approving any of the Recall Petitions’ language would cause the circulation of language for which the Representative could not adequately “frame a proper response” in support of his performance. Accordingly, this Commission must reject the Recall Petitions for failing to state with sufficient clarity the reasons for the recall.

4. The Representative Must Be Provided Adequate Time at the Clarity Hearing to Meet Minimum Applicable Constitutional Requirements.

The Representative respectfully requests that his legal counsel be afforded the opportunity to present a meaningful analysis of the petitions that, to the extent necessary, may

exceed the ten minute limitation the Commission normally imposes upon those appearing before the Commission. Because the Petitioner has submitted six separate petitions, the Commission's rule limiting the Representative's opportunity to present a response to five minutes (50 seconds per petition) and deprives the Representative of procedural protections and constitutionally protected due process rights by eliminating the opportunity to be heard in a meaningful manner. Accordingly, the Representative respectfully requests additional time at the hearing as necessary to present a meaningful response to each petition.

CONCLUSION

The moral of this story is that more is not always better because, although Petitioner has submitted six petitions to recall the Representative, none of those petitions meet the statutory minimum requirements for approval. The Petitioner must comply with the mandatory form requirements of the Michigan Election Law. Clearly, the Petitions do not meet the requirement of identifying the office and the district at issue in this matter. Whether one agrees with the technical requirements of the Election Law or not is not the issue. The issue is whether these requirements have been met. They have not.

Even assuming, *arguendo*, that the mandatory form requirements have been met, the Petitions still fail due to their inability to satisfy clarity mandates. To satisfy the threshold established by the Michigan Election Law and applicable precedent, Petitioner simply needs to provide a factually accurate and clear petition. Here though, the subject petitions are so unclear that they serve neither to "furnish information to the electors on which they may form a judgment when called upon to vote" nor give the Representative "information from which to frame a proper response in support of his performance." *Noel*, supra. Accordingly, this

Commission must reject all of the subject petitions is inadequate to meet the clarity requirements set forth in MCL 168.952(3).

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: 

Jason T. Hanselman (P61813)

Gary P. Gordon (P26290)

Attorney for Mr. James P. Bolger

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Exhibit K

Calhoun County Election Commission Meeting
Monday, June 13, 2011 at 2:00 p.m.

Calhoun County Clerk-Elections Office, Room 2-100a
315 W. Green Street, Marshall, Michigan

AGENDA
~ DRAFT ~

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda
5. Review and approval of June 3, 2011 minutes
6. Consideration of recall language filed against 63rd State House Representative, James P. Bolger
Note: comments limited to 10 minutes and must speak to the clarity of the language.
 - * Ask sponsor if there are any changes to the language
 - * Comments to clarity of language from sponsor Smith or representative
 - * Comments to clarity of language from Mr. Bolger or representative
 - * Comments to clarity of language from the Public
 - * Motion for vote on the clarity or non-clarity of Petition #1
 - * Motion for vote on the clarity or non-clarity of Petition #2
 - * Motion for vote on the clarity or non-clarity of Petition #3
 - * Motion for vote on the clarity or non-clarity of Petition #4
 - * Motion for vote on the clarity or non-clarity of Petition #5
 - * Motion for vote on the clarity or non-clarity of Petition #6
7. Election Commissioners' Comments
8. Announcements
9. Adjournment

Exhibit L

STATE OF MICHIGAN
COUNTY OF CALHOUN
ELECTION COMMISSION

**In re Petition for Recall
For the State Representative,
63rd District**

**Mr. James P. Bolger
Michigan State House Representative,
District 63**

Jason T. Hanselman (P61813)
Gary P. Gordon (P26290)
Attorneys for Michigan State House
Representative James P. Bolger
Dykema Gossett PLLC
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Lansing, MI 48933
(517) 374-9100

OBJECTIONS TO PETITION FOR RECALL

NOW COMES Mr. James P. Bolger (the "Representative"), by and through his attorneys DYKEMA GOSSETT PLLC, in support of the Representative's Objections to the Petition for Recall filed by Autumn Smith (the "Petitioner"), stating as follows:

INTRODUCTION

The Petitioner has filed a petition to recall the Representative (the "Recall Petition") that lacks clarity and is functionally incomprehensible. Claiming that the Representative is "unfit" for office because he "lead the vote for PA 4 of 2011" and acted to "raise taxes upon retirees and lower income families," the Petitioner filed reasons for recall for the office of 63rd District State

Representative. Petitioner fails to state with sufficient clarity the reason for the recall. The Recall Petition is ambiguous regarding all statements therein, employs terms without defining those terms, fails to set forth actions upon which a common voter could form a judgment, misrepresents the law, and contains falsities. As such, the Recall Petition undoubtedly fails to meet the standards set forth by Michigan law. Certification of the Recall Petition as submitted would only serve to confuse voters and violate the Representative's legal right to explain the Recall Petition's allegations.

ARGUMENT

A. THE RECALL PETITION FAILS TO STATE WITH SUFFICIENT CLARITY THE REASONS FOR RECALL

1. Statutory Standard

Through the Constitution, Michigan citizens expressed their desire to permit the recall of "all elected officers except judges." Const 1963, art 2, § 8. Importantly, the Michigan Constitution provides that the Legislature must enact laws to carry out the Constitution's provisions. *Id.* Subject to procedural and substantive conditions, the Legislature provided the means for citizens to file recall petitions in MCL 168.951 *et seq.*

Pursuant to the Legislature's mandate, a petition for recall must contain clear reasons for the recall. Specifically, Michigan Election Law requires a recall petition to "[s]tate clearly each reason for the recall," and requires county election commissioners to "determine whether each reason for the recall stated in the petition is of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." MCL 168.952(3) (emphasis added).

The term "clearly" has been defined as "[v]isible, unmistakable, in words of no uncertain meaning." *Molitor v Miller*, 102 Mich App 344, 347 (1980) quoting Black's Law Dictionary (4th ed.), p 318. For example, as determined by the Court of Appeals in *In Re Wayne County Board of Election Commissioners*, 134 Mich App 158, 162 (1984), the Wayne County Board of Election Commissioners properly rejected recall language that simply stated "he voted to increase the state income tax." Instead, the Wayne County Board of Election Commissioners later accepted a recall petition that read: "He voted for passage of Michigan House Bill No. 4092, on March 24, 1983, increasing the Michigan state income tax rate from 4.6 percent to 6.35 percent for the year of 1983" *In Re Wayne County Board of Election Commissioners*, supra, 134 Mich App at 162.

Thus, Michigan law is clear—a recall petition is legally invalid unless it clearly explains the reasons for recall for three distinct reasons. First, so that registered voters in the district that are asked to sign the petition can identify the conduct cited and form an opinion regarding the necessity of a recall. Second, so that the officer may identify the conduct cited and defend him or himself. Third, and most importantly, so that the voters when viewing the language on the ballot are able to determine without a doubt the specific conduct that is the basis for the extreme action of holding a recall election. The Recall Petition misses the mark under both standards.

2. The Recall Petition's Lack of Clarity and Blatant Misrepresentations Render the Petition Legally Insufficient Because it does not Explain a Course of Conduct for Electors to Identify as the Basis for the Recall.

According to the Legislature's implementation of the Constitution's provisions, this Commission cannot approve the Recall Petition unless it is of "sufficient clarity to enable...the electors to identify the course of conduct that is the basis for the recall." MCL 168.952(3).

The specificity requirement exists “to prevent abuse of the elective franchise by ensuring deliberate and informed action by those called upon to sign the recall petition.” *Noel v Oakland Co Representative*, 92 Mich App 181, 187-88; 284 NW2d 761 (1979), citing *Wallace v Tripp*, 358 Mich 668, 680-81; 101 NW2d 312, 315 (1960). Indeed, the statement for recall “must be such as will furnish information to the electors on which they may form a judgment when called upon to vote.” *Noel*, 92 Mich App at 185. Further, the statements in a petition cannot be generalized—the language should list an officer’s specific action at a specific event or time. *See, e.g., Dimas v Macomb County Election Comm*, 248 Mich App 624, 630; 639 NW2d 850 (2002).

The Recall Petition’s language is ambiguous and generalized. The language lacks the requisite clarity for an elector to form an informed judgment, and, therefore, fails to meet the statutory standard. The Recall Petition’s misleading language further conflates this fact. An examination of the Recall Petition’s language illustrates this fact.

A. The First Sentence is Ambiguous and Confusing.

The Recall Petition’s first sentence claims that the Representative “[h]as proven himself unfit to represent the people of the 63rd Michigan House District...”. The ambiguities in that sentence render the Recall Petition unclear and legally insufficient for approval by this Commission. Specifically, the sentence alleges that the Representative is “unfit” for public office. In determining whether public office holders are “unfit” for office, Michigan Courts demand a higher standard than simply a difference in opinion regarding public policy and instead require demonstration of moral depravity or criminal activity. *In re Nettles-Nickerson*, 481 Mich. 321, 750 N.W.2d 560 (2008); (“Respondent’s deliberate decision to lie under oath itself renders Respondent unfit...”). *In re Noecker*, 472 Mich. 1, 17, 691 N.W.2d 440 (2005) (“When a judge lies under oath, he or she has failed to internalize one of the central standards of justice and

becomes unfit..."); *Pastaleniec v Great A & P Tea Company, Inc*, 49 Mich App 702, 212 NW2d 734 (1973) ("In providing a test for incurable insanity under the workmen's compensation act, we believe that the best approach is to present a broad definition, consistent with the basic principle that the employee's disabling condition make him unfit for employment.").

Here though, the petition language serves to confuse voters by implying that the Representative is incapable of serving office. If the Petitioner merely disagrees with the Representative's policies, the petition must state that explanation rather than attempting to mislead voters to believe the Representative has committed an immoral or criminal act. Presumably the petitioner would argue that a sophisticated voter could wade through the petition's rhetoric to infer a meaning to the word "unfit." The standard, however, is not whether the 63rd District's registered voters are able to adequately decipher petition language, but whether the language is stated with sufficient clarity so that a voter can identify specific actions and make a judgment. Although the Petitioner may know what he meant by "unfit," it is unreasonable to assume that the average registered voter in the 63rd District will know or understand what the Petitioner meant by "unfit." It will be impossible for the average voter to attempt to interpret the petition's language regarding the meaning of "unfit" and likely would default to an unintended meaning such as the Representative has committed an illegal or immoral act. If the Petitioner means to say that the Petitioner simply disagrees with the Representative's policy directives, the petition must be clear that the objection is a philosophical disagreement, not a matter of fitness for office.

In addition to not being clear enough for voters to understand, the petition also is not sufficiently clear for the Representative to respond. The use of the word "unfit" will require the Representative to prove a negative—that he is not-not fit for public office—without any clear

explanation of the attribute that he possesses that renders him unfit. Asking the Representative to respond to such an amorphous concept is fundamentally unfair and does not satisfy the statutory requirements set forth in MCL 168.952(3).

B. The Second Sentence Further Confuses the Recall Petition, and Contains Misleading Statements.

The second sentence states that “[h]e lead the vote for PA 4 of 2011...”. First, presumably, since Petitioner is referring to legislation that already has passed, it is confusing that the petition uses the present tense of “lead,” rather than the past tense of “led” when referring to the Representative’s action. Additionally, even if a voter could read between the lines to interpret that the Petitioner intended to refer to past tense action, it is unclear what the petition means by “lead the vote.” The Representative did not sponsor the bill or write the bill. Although the Representative ultimately voted for the legislation, the concept of “leading the vote” is vague and misleading regarding the Representative’s actual actions with regard to the bill. It gives the impression that the Representative somehow championed to bill or had some type of super-influence over votes on the bill. Given that ambiguity, no voter could know to what the petition is referring. Accordingly, in addition to being grammatically unclear, this statement is misleading, and as such, cannot fall within the parameters of “clear” language required by MCL 168.952(3).

C. The Third Sentence Adds to the Confusion of the Preceding Sentences by Mischaracterizing the Legislation and Mis-stating the Effects Thereof.

The third sentence in the petition states that the Representative worked to “promote bills that raise taxes upon retirees and lower income families.” As a threshold matter, it is unclear from the petition what “bills” are objectionable and whether the Representative sponsored, voted

DYKEMA GOSSETT A PROFESSIONAL LIMITED LIABILITY COMPANY, CAPITOL VIEW 201 TOWNSEND STREET SUITE 900 LANSING, MICHIGAN 48203

upon, or otherwise was involved in such bills, let alone “promoted” them. It is generally unclear what the petition means by “promote” legislation.

Further, and as explained in the preceding section, the Representative did not write or sponsor any tax legislation that passed the House of Representatives during the current session. When read as a whole, it appears the petition intends to state that PA 4 of 2011 raises taxes, however, that legislation is the Emergency Financial Manager Law and has nothing to do with taxes. It appears the intent is to muddy the waters for those reading the petition by combining references to PA 4 of 2011 with references to some bills that purportedly increase taxes (although such phantom bills are not identified in the petition). If the intent is to confuse voters, the Petitioner has succeeded.

Furthermore, assuming a voter could decipher that the “raising taxes” sentence refers to a bill other than PA 4 of 2011, the petition confuses that other bill’s effect by erroneously stating that the bill raises taxes on retirees and lower income families.¹ With regard to retirees, perhaps

¹ Because the only legislation cited in the petition does not implicate taxes, the Representative must guess to which legislation the petition refers. From the petition language, however, it is unclear against which of the following tax-related bills that the Michigan House of Representatives considered during the current session the Representative should attempt to defend himself:

- HB 4361- Income tax; rate; general revisions and implementation of a corporate income tax; provide for.
- HB 4362- Michigan business tax; replacement; option to claim certain certificated credits after enactment of a corporate income tax act; provide for.
- HB 4479- Taxation; other; multistate tax compact; modify.
- HB 4480- Retirement; state employees; tax exemption for pensions; eliminate.
- HB 4481- Retirement; public school employees; tax exemption for pensions; eliminate.

the petitioner intends a veiled reference to the application of Michigan's income tax to income from certain pensions. Of course, voters cannot be certain regarding the Petitioner's intended meaning because the referenced legislation did not actually raise taxes, and certainly did not raises taxes on all retirees. Again, although the Petitioner may have understood the meaning of that phrase, the clear intent is to attempt to trick average voters into believing that the legislation raises taxes on all retirees. Indeed, most retirees will not be impacted by the legislation.

Similarly, the statement that the legislation raises taxes upon retirees and lower income families is confusing because of its inherent inaccuracy. It is unclear what is meant by "lower income families," particularly when read in light of the plain language of tax legislation that the Michigan House has passed this session, none of which "raises taxes" for lower income families. PA 4 of 2011 does not address taxing any person, and certainly does not raise taxes on lower income families. If the Petitioner disagrees with the Representative's actions, the petition should clearly explain the Representative's actions in a manner that voters and the Representative can understand rather than weighing the petition down with ambiguous rhetoric designed to mislead. More direct and concise language would allow the Representative to identify the action upon which the recall is based and would better allow voters to make a determination regarding whether recalling the Representative is appropriate.

3. The Recall Petition's Lack of Clarity and Misrepresentations Preclude the Representative from Identifying and Defending against the Reasons for the Recall.

-
- HB 4482- Retirement; legislative; tax exemption for pensions; eliminate.
 - HB 4483- Retirement; other; tax exemption for pensions of city library employees; eliminate.
 - HB 4484- Retirement; judges; tax exemption for pensions; eliminate.

Pursuant to MCL 168.952(3), a recall petition's stated reason for recall must also be clear enough so that the officer may identify the course of conduct that is the basis for recall. MCL 168.952(3). This requirement exists so that an official whose recall is sought receives an adequate opportunity to rebut the allegations. Indeed, the law must afford the public official who is the subject of the proposed recall minimum due process rights. *Noel*, 92 Mich App at 188. For this reason, if the recall election occurs, Michigan Election Law provides specifically that "the officer whose recall is sought, in not more than 200 words, may submit a justification of conduct in office." MCL 168.966. As a result, a petition for recall must give an elected official "information from which to frame a proper response in support of his performance." *Noel*, 92 Mich App at 188.

In *Noel*, the petition stated as the reason for recall "[i]ncompetence in administering his/her duties as an elected official and in a manner not conducive to the better interests of the residents of the City of South Lyon." *Noel* at 187-188. In holding that such a reason did not satisfy the statutory requirement for clarity, the Court of Appeals noted that the purpose of the statutory clarity requirement was to "prevent abuse of the elective franchise by ensuring deliberate and informed action by those called upon to sign the recall petition, while at the same time affording the official sought to be recalled at least some minimal due process guarantees."

Id. (internal citations omitted).

For a number of reasons, the Recall Petition fails to state clearly the reasons for recall so that the Representative may provide a justification. Specifically, the petition appears to merge numerous legislative actions into one jumbled allegation. In only 200 words, the Representative cannot be expected to decipher incomprehensible rhetoric or otherwise guess what the Petitioner means in order to craft a response to the petition. It is impossible for the Representative to deny

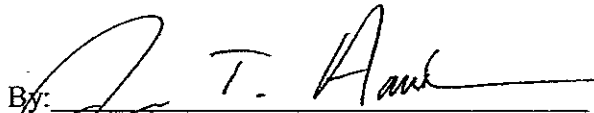
or admit his actions when they are not defined by the Recall Petition's language. For all of the reasons stated above, approving the Recall Petition's language would cause the circulation of language for which the Representative could not adequately "frame a proper response" in support of his performance. Accordingly, this Commission must deny the Recall Petition for failing to state with sufficient clarity the reasons for the recall.

CONCLUSION

Although Petitioner may have had an idea in mind when writing the petition language, to any other reader, that language is utterly incomprehensible. Further exacerbating the problem are the Petition's false and misleading statements. For those reasons, the voters cannot properly form a judgment on the matter. In addition, it is important to remember that the Representative has an interest in his seat as a public official—that interest must be protected by this Commission in demanding that Petitioner provide clear language stating specific actions for the recall. Petitioner has failed to meet this threshold. For all the reasons stated, the Representative respectfully requests that this Commission deny the Recall Petition.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: 

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Exhibit M

RECALL PETITION

INSTRUCTIONS ON REVERSE SIDE

We, the undersigned, registered and qualified voters of the City of Battle Creek Township of Shiawassee in the County of Shiawassee and State of Michigan, petition for

the calling of an election to recall James Bolger from the office of Representative in State Legislature, 63rd district, for the following reason(s):
James Bolger voted in favor of the "Local Government and School District Fiscal Accountability Act," now known as "Public Act 4 of 2011" (formally, HB 4214). Public Act 4 of 2011 in section 19 provides that an emergency manager may, "with approval of the governor, disincorporate or dissolve the municipal government and assign its assets, debt and liabilities as provided by law."

WARNING — A PERSON WHO KNOWINGLY SIGNS A RECALL PETITION MORE THAN ONCE OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

FOR CLERK'S USE ONLY

No.	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					Month	Day	Year
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12							

CLERK - ELECTIONS
 SHIASHAWSEE COUNTY
 ANNE B. HORTLANDER
 2011 JUN 3 PM 22
 FILED

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is a qualified and registered elector of the electoral district of the official whose recall is sought; that each signature on the petition was signed in his or her presence and was not obtained through fraud, deceit or misrepresentation; and that he or she neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once. The undersigned circulator of the above petition further asserts that to his or her best knowledge, information and belief each signature is the genuine signature of the person purporting to sign the petition; the person signing the petition was at the time of signing a qualified registered elector of the City or Township listed in the heading of the petition; and the elector was qualified to sign the petition.

WARNING — A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS A CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

(Signature of Circulator)

(Date)

(Printed Name of Circulator)

(City or Township Where Registered)

Complete Residence Address (Street and Number or Rural Route)

(Zip Code)