



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

July 21, 2021

**SECOND STAFF REPORT:
FAIR AND EQUAL MICHIGAN INITIATIVE PETITION**

SPONSOR: Fair and Equal Michigan, P.O. Box 10030, Lansing, Michigan 48901.

DATE OF FILING: October 13, 2020.

NUMBER OF VALID SIGNATURES REQUIRED: 340,047 signatures.

TIMELINE: This petition and its 100-word summary were approved as to form by the Board of State Canvassers on January 28, 2020; circulated for 249 days;¹ and filed on October 13, 2020. A random sample of 502 signatures was released to the public on May 19, 2021. A challenge was timely filed ten business days later, on June 3, 2021, by Citizens for Equality Fairness and Justice (Citizens or challenger).

The [first staff report](#) was published July 8, 2021. The challenger filed its first and second supplemental challenges on July 12, and Fair and Equal Michigan (Fair and Equal or sponsor) filed responses to the June 3 challenge, supplemental challenges, and staff report July 12-13.² The Board met on July 13 to consider the sufficiency of this petition but due to time constraints, staff could not complete its review of the challenger and sponsor's numerous overnight filings on July 12.

At its July 13 meeting, the Board directed staff to review all materials submitted on July 12-13, instructed the sponsor and challenger to file any written materials on or before July 16 at 5:00 pm, and permitted the sponsor to respond in writing to any alleged duplicate signatures by July 19 at 5:00 pm. This second staff report is being published July 21 in advance of the Board's July 26 meeting.

TOTAL FILING: 86,608 sheets containing 468,830 signatures. Included in sample: 66,911 sheets containing 445,310 signatures (the universe). Excluded from sample: 19,697 sheets containing 23,520 signatures.

¹ In accordance with the opinion and order in *Fair and Equal MI v Benson*, Court of Claims Dkt. No. 20-000095-MM (June 10, 2020), signatures dated within 249 days of the date of filing (i.e., on or after Feb. 7, 2020) were accepted as facially valid: "To that end, the Court will toll or suspend the statute's 180-day signature expiration deadline for a period of 69 days, which is equal to the amount of time that residents of this state were ordered to 'Stay at Home.'"

Under MCL 168.472a and the Board's established procedures, a signature that is dated more than 180 days prior to the date the petition was filed is coded "ED" (early date). Here, only 2 signatures were coded invalid as "ED" (early date) for having included the signers' dates of birth (6/29/76 and 5/20/1999).

² The first supplemental challenge and 2 of 6 responses were filed on July 12 during normal business hours; the second supplemental challenge and 4 remaining responses were filed between 8:46pm on July 12 and 6:57am on July 13.

	<u>Sheets</u>	<u>Signatures</u>
Defective circulator certificate (i.e., omitted or incorrect date, failure of out-of-state circulator to check box, incomplete address, etc.)	630	4,040
Jurisdiction errors (i.e., county of circulation does not align with signer entries, invalid jurisdiction entry by circulator or every signer on sheet)	244	501
Signer errors made by every signer on sheet (i.e., all signers entered date of birth or other incorrect date)	134	260
Miscellaneous (torn or mutilated sheets, etc.)	6	36
SUBTOTAL of wholly invalid “pen-and-ink” sheets	1,014	4,837
PLUS invalid electronic signatures collected via DocuSign	+ 18,683	+ 18,683
TOTAL number of wholly invalid petition sheets/signatures	19,697	23,520

The two-stage sampling process was selected for this petition. Under the Board’s established procedures, a small sample is drawn at the first stage of approximately 500 signatures and the result of that sample determines whether there is a sufficient level of confidence in the result to immediately recommend certification or the denial of certification. If the result of the small sample indicates a close call, a second random sample must be taken to provide a result with the maximum confidence level that can be obtained.

NUMBER OF SAMPLED SIGNATURES: 502.

SUMMARY OF CHALLENGES, RESPONSES, REBUTTAL STATEMENTS: On June 3, July 12 and 15, Citizens filed an initial challenge and supplemental challenges asserting a net total of 226 sampled signatures were invalid.³ Of these, staff rejected challenges against 61 sampled signatures; 117 challenges overlapped determinations of invalidity made by staff; and 48 challenges were accepted. Among the challenges accepted by staff were 46 sampled signatures that were confirmed to be duplicates of signatures in the universe, meaning the person signed the petition at least twice. Prior to the review and agreement with these duplicate challenges, staff had identified 337 valid signatures in the sample; after the accepted challenges the number is 297, as explained in further detail below.

Citizens also alleges that the petition sponsor illegally gathered electronic signatures; five Fair and Equal petition circulators were investigated by the Attorney General (as part of its Unlock Michigan criminal investigation) for allegedly employing illegal tactics in gathering signatures; and one petition circulator allegedly gave a false address as her “complete residence address.”

On July 13, 16 and 19, Fair and Equal filed multiple rebuttal statements attempting to rehabilitate a net total of 184 sampled signatures.⁴ Of these, staff rejected the rehabilitation attempts for 139 sampled signatures; 38 overlapped determinations of signature validity made by staff; and 7 signatures were successfully rehabilitated from invalid status codes to valid signatures.

Fair and Equal raises several issues in attempting to rehabilitate signatures, as described below.

Universe Signatures in Dispute: Fair and Equal claims 61 petition sheets containing 257 signatures were wrongly excluded from the universe of facially valid petition sheets⁵ and alleges its 18,683 electronically gathered signatures should not have been rejected and excluded from the universe.⁶ Additionally, the sponsor

³ Challenger’s June 3 submission and emails sent July 12 at 10:23am and 8:46pm.

⁴ Sponsor’s email sent July 13 at 4:07am; sponsor’s email sent July 13 at 6:56am; sponsor’s July 16 email sent at 4:53pm; sponsor’s email sent July 19 at 1:11pm.

⁵ Sponsor’s email sent July 12 at 2:25 pm.

⁶ Sponsor’s email sent July 13 at 12:34am.

claims (in error) that BOE undercounted the actual number of sheets and signatures filed by 2,576 sheets and 14,631 signatures.⁷

Exclusion of Electronically Gathered Signatures: Fair and Equal contests the rejection of 18,683 signatures gathered electronically through DocuSign. Staff did not include the electronic signatures in the sample. Consistent with past practice, staff compared signatures on petitions to signatures on the Qualified Voter File (QVF) as required by law.⁸

Rejection of Sampled Signature When Duplicate Found in the Universe: Fair and Equal argues that when a duplicate of a signature from the sample is found in the universe, the signature in the sample should be invalidated only if the duplicate was *also* found in the sample. Accordingly, Fair and Equal argues that 58 duplicate signatures identified by Citizens are wrongly excluded. Of these, staff confirmed the existence of a duplicate signature in the universe for 46 sampled signatures; rejected 7 alleged duplicates; and found that 5 alleged duplicates overlapped staff's determination of invalidity for other reasons.

During the canvass process, a duplicate signature is found to exist only when the same individual is found to have signed multiple petition sheets, each entry is facially valid, and the signatures match. If either entry is invalid for another reason (for example, because the signer incorrectly entered his or her jurisdiction of registration), then no duplicate is found, affording signers an opportunity to correct an earlier erroneous entry.

Fair and Equal urges the Board to set aside its longstanding practice of rejecting a sampled signature when a duplicate is found to exist in the universe, but this process is rooted in federal and state case law and designed to deter fraud in signature gathering, thereby ensuring petitions contain a sufficient number of valid signatures to merit certification. *See, e.g., Taxpayers United for Assessment Cuts v Austin*, 994 F2d 291 (CA 6, 1993),⁹ *Michigan State Dental Society v Sec. of State*, 294 Mich 503 (1940), Michigan Values Life initiative petition (2020), Protecting Michigan Taxpayers initiative petition (2018), and Protecting Michigan Taxpayers initiative petition (2015).

Rejection of Signature When Voter Not Registered Anywhere in Michigan or in Listed Jurisdiction at the Time of Signing: The Board's longstanding practice is to consider a signer properly registered only if the signer was registered in the municipal jurisdiction the signer indicated on the petition sheet (or mailing jurisdiction that encompasses the municipality of registration), at the time of signing. Fair and Equal argues that signatures should be accepted as long as the voter is *currently* registered *anywhere* in the state. Fair and Equal claims to have rehabilitated 53 signatures previously coded as NR (not registered); after review, 6 signatures¹⁰ were recoded as valid but 47 attempted rehabilitations were rejected.

The reasons for rejection included petition signers whose sampled signatures are dated earlier than the date they first registered to vote in Michigan (14 signatures), and petition signers whose sampled signatures do not include the name of the jurisdiction where they were registered to vote or correct mailing jurisdiction on the date of signing (23 signatures). Similar reasons for rejecting purported rehabilitations include one signer who provided a non-existent address and two signers who were registered at the address written but signed the wrong county sheet.

⁷ Sponsor's July 12 email sent at 11:31am. BOE denies that it undercounted the number of sheets and signatures alleged by the sponsor. BOE's established practice is to assign multiple staff to sort petition sheets according to the number of signatures on each sheet, bundle the sorted sheets into packs of 50, and conduct the count. Facially valid sheets included in the universe are then individually stamped with a 5-digit number (here, between 00001 and 66,911), which provides an additional quality control check on the initial sheet count.

⁸ MCL 168.476.

⁹ "In this case, 5,000 persons signed twice. The Board excluded both the first signature, and the subsequent duplicative signature. Excluding these signatures, however, is rationally related to Michigan's interest in protecting against fraud in its initiative system." *Id.* at 299.

¹⁰ Sampled signatures 7842-6, 14386-4, 23929-5, 26034-3, 29733-4, and 56979-1.

For 7 attempted rehabilitations in this category, staff and sponsor do not agree on the identity of the petition signer. These signatures are coded NR (not registered) as staff believes the best matching record available indicates the person was not registered on the date of signing or not registered in the jurisdiction indicated.

Dual Jurisdiction Entries: Fair and Equal also asserts that the Board’s long-established practice of rejecting a signature when a signer writes the names of two cities or townships in the jurisdiction column of the petition violates the Michigan Election Law and urges the Board to treat signatures as valid regardless of how many jurisdictions are written by the signer. Fair and Equal argues that 13 signatures should be included on this basis.¹¹

Disputes Over Individual Signature Rejections: Fair and Equal disputes the rejection of some individual signatures. Fair and Equal argues that staff incorrectly determined that signatures did not match the signature on file. Fair and Equal argues that these individual signatures or date entries should be accepted. The total number of signatures in this category is 8. Of these, Fair and Equal successfully rehabilitated one.¹²

Signatures Previously Determined to be Valid: Fair and Equal’s July 16 letter lists 18 signatures in Table 4 that it mistakenly claims were coded invalid but in fact, all but two were previously determined by staff to be valid signatures. In other words, 16 of 18 signatures identified in Table 4 were already included in the total number of valid signatures provided in the July 8 staff report, and the two remaining signatures are coded invalid for other reasons.

Disputes Over Dates Written by Signers: Fair and Equal identifies 5 signatures it claims ought to be rehabilitated due to Fair and Equal’s view that staff incorrectly determined that dates were incorrect or could not be ascertained. Of these, the sponsor successfully rehabilitated one.

SAMPLE RESULT:

	1st Staff Report (July 8)	2nd Staff Report (July 21)
Valid signatures:		
Registered signers; signatures verified	337	297
Invalid signatures:		
Signatures determined invalid due to signer’s registration status (on date of signing, signer was not registered to vote anywhere in MI, or jurisdiction written by signer does not align with jurisdiction where registered/mailling jurisdiction)	97	92
Signer address errors (jurisdiction name does not align with county of circulation, address omitted, street address given by signer does not align with jurisdiction where registered/mailling jurisdiction, or entry of more than one jurisdiction of registration)	39	39
Miscellaneous errors (omitted/incomplete signature, or genuineness of signature not verified)	19	19
Signer date errors (incorrect or omitted date)	10	9
Duplicate signatures (sampled signature is a duplicate of one or more valid universe signatures)	0	46
TOTAL	502	502

¹¹ 12 of 13 signatures are coded Dual for including the names of two or more cities/townships in the address, and one signature was already coded as valid.

¹² 7 of 8 signatures are coded NS for having signers having printed their names twice while the digitized signature on file in the QVF is a cursive, non-matching signature.

	1st Staff Report (July 8)	2nd Staff Report (July 21)
Number of valid signatures	337 / 502	297/502
Validity rate	67.1%	59.2% ¹³
Projected number valid in entire filing	298,943	263,460
Minimum number required	340,047	340,047
Signature surplus (or deficit)	(41,104)	(76,587)
Formula result:	Insufficient	Insufficient
Confidence level:	100%	100%

According to the random sampling formula:

<u>Number of Valid Signatures</u>	<u>Formula Result</u>	<u>1st Staff Report (July 8)</u>	<u>2nd Staff Report (July 21)</u>
398 or more	Certify		
370 – 397	Sample more signatures		
369 or fewer	Deny certification	337	297

ESTIMATED NUMBER OF VALID SIGNATURES CONTAINED ON PETITION: Based on the result of the random sample, the petition is projected to contain an estimated 263,460 valid signatures (at a confidence level of 100 percent¹⁴), 76,587 signatures fewer than the minimum number required by Article II, Section 9 of the Michigan Constitution (340,047). The random sample result also indicates that the petition sponsor is 73 sampled signatures short¹⁵ of the minimum number required to draw a second sample.¹⁶

STAFF RECOMMENDATION: The staff recommendation remains the same under the July 8 and July 21 staff reports: The Board should **decline to certify** the petition due to insufficient signatures.

Note that while the information provided in this staff report is current as of this writing, additional information may be submitted by the petition sponsor or challenger after the date of publication.

The first staff report was published on July 8, three business days prior to the July 13, 2021 meeting at which the Board was initially scheduled to consider the sufficiency of the Fair and Equal petition.

The second staff report is being published on July 21, three business days prior to the July 26, 2021 Board of State Canvassers meeting, in accordance with MCL 168.476(3) (“At least 2 business days before the board of state canvassers meets to make a final determination on challenges to and sufficiency of a petition, the bureau of elections shall make public its staff report concerning disposition of challenges filed against the petition.”).

¹³ To compare the validity rate for this petition with previous initiative, referendum and constitutional amendment petitions, see [Analysis of Validity Rates for Initiative and Referendum Petitions, 1978-2020](#).

¹⁴ A 100 percent confidence level means that there is a 100 percent chance that drawing a different sample would produce the same result.

¹⁵ The minimum number of valid sampled signatures required to draw a second stage sample is 370, which corresponds to an estimated number of 328,216 valid signatures in the entire filing. In other words, it is estimated that the entire filing contains 64,756 fewer signatures than required to draw a second sample (328,216 – 263,460 = 64,756).

¹⁶ For comparison purposes, a second sample was most recently drawn in 2020 for the Michigan Values Life initiative petition, where the first staff report concluded the sample contained 446 valid signatures, or 3 sampled signatures short of the minimum number required to draw more (449).