

Horton's

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Secretary of State Fires Opening Shot at Overturning New Law on Ballot Proposals

By Steve Horton

In the recently-completed *Lame Duck Session* of the 99th Michigan Legislature—a period that started after Thanksgiving and ended a couple days before Christmas—the Republican-controlled Senate and House passed nearly 400 bills and sent them to Gov. Rick Snyder for his consideration.

A few of them were considered as attempts to limit the new state officials—governor, secretary of state, and attorney general—who are Democrats and would take office on Jan. 1, ending the GOP's control of both the legislative and executive branches.

There was also a bill to change how citizens could get Initiatives and Referendums on the statewide ballot. This was seen by opponents as a means of preventing—or at least hindering—a repeat of the three statewide ballot proposals that passed in the November General Election, with two of them having been opposed by most Republican officials and their partisan supporters.

Those two were the change to how Legislative and Congressional Districts are

drawn (known as the Anti-Gerrymandering Proposal) and the other that allowed no-reason absentee voting and allowed a voter to



Jocelyn Benson, the new Michigan Secretary of State

register during the period leading up to and including Election Day.

Gov. Snyder ended up vetoing around 40 of the bills, including one that was viewed as a means for the Legislature to offset some of the power of the Attorney General in lawsuits that the state would either initiate or defend.

However, despite appeals by many citizens to do otherwise, Snyder signed the law that changes how citizens can put proposals on the statewide ballot—new requirements that would likely make it harder to meet the necessary threshold.

A court case or cases to overturn this new law was expected, mainly centered around the requirement that no more than 15 percent of

the signatures on the petition could come from any one of Michigan's 14 congressional districts, a restriction that would prevent ballot committees from solely targeting the most heavily populated areas.

In my own view, which is admittedly not supported by any detailed knowledge of Constitutional Law, this seems a violation of the One Man, One Vote Ruling that years ago ended the practice of basing districts mainly on geography rather than population.

While a challenge to the new law will still probably end up in court, the 'first shot' against it has been fired by Michigan's new secretary of state, Jocelyn Benson, who this past week sent out the following news release. I'm re-printing to give you, the reader, an understanding of what her reasoning is.

It's a matter, amongst others, that is sure to grace the media headlines in the coming weeks and months.

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Secretary Benson requests Attorney General Opinion on Changes to State's Initiative and Referendum Process

Secretary of State Jocelyn Benson last week delivered a letter to Attorney General Dana Nessel requesting a formal opinion on the constitutionality of several changes to Michigan's initiative and referendum process.

The changes were passed by the Legislature and signed by then-Gov. Rick Snyder as Public Act 608 in the last days of 2018.

"I am proud that, for more than a century, Michiganders have exercised core constitutional rights in the circulation of initiative, referendum and constitutional amendment petitions," Benson said. "I am deeply concerned that the new restrictions enacted late last year in Public Act 608 of 2018 may potentially violate those constitutional rights by adding new burdens and restrictions on the process."

Benson's letter asks Nessel to determine the constitutionality of:

--The establishment of a minimum geographic distribution requirement for petition signatures and a limitation on the number of signatures per congressional district that count toward sufficiency.

--Whether the secretary of state retains authority to prescribe a substantially compliant, congressional district-based form for statewide ballot proposal petitions given P.A. 608's elimination of the countywide petition form.

--The requirement for paid signature gatherers to file an affidavit before circulating petitions. --The option created by P.A. 608 for a petition sponsor to voluntarily seek approval of the content of the petition summary to avoid future challenges and the disadvantage it would place on sponsors of referendum petitions.

--The requirement to file with the Michigan Supreme Court any legal challenge regarding a determination by the board of state canvassers of the sufficiency or insufficiency of an initiative petition and that the challenge be advanced on the Supreme Court's docket.

--Penalties that could require the rejection of otherwise valid petition signatures if a petition circulator doesn't comply with all of the requirements of the act.

"With the 2019-20 election cycle already underway, it is important for the Secretary of State to provide the appropriate guidance to potential petition sponsors, circulators and voters, so that all may understand how 2018 PA 608 affects their rights," Benson wrote. "Therefore, I respectfully ask for your formal opinion regarding these matters."