

# No election—yet—in 'stale signature' case

By Tim Richard  
staff writer

It's one thing for a judge to rule your way on a point of constitutional law. It's quite another to get a special election called.

Ask John Lauve and Dean Fitzpatrick. They want Oakland Circuit Judge Alice Gilbert to order special elections on several petition drives, most notably the one to alter the death penalty.

"We understand the attorney general will appeal," said Virginia Crosey, a Libertarian Party activist who is working on the case.



Judge Alice Gilbert lawmakers "hasty"

on recall petitions.

GILBERT HEARD oral arguments the last week in January, promised a quick written decision, and issued it April 30.

The law began life as a House bill requiring county clerks to transmit precinct election results to the Secretary of State. The Senate, however, amended it to a 90-day "stale signature" law. The House quickly concurred.

Gilbert observed: "Only two days passed from the time the Senate introduced the substitute until it returned the bill to the House," where it was given immediate effect.

"Such hasty consideration of an entirely new substitution made only seven days before the bill was passed for gubernatorial approval seems patently unconstitutional."

LATER IN the 1973 session, the law was even more swiftly amended to 180 days. Again it was the Senate which, "in a flurry of activity," amended an obscure bill in committee, suspended its own rules, pushed the bill on to third reading and passed it in a single day.

The House concurred, suspending its own rule and passing it in a single day.

"This court," wrote Gilbert, "believes that procedural details affecting election administration differ substantially and significantly from a limitation on a basic constitutional right such as the right to petition for ballot access.

"Further, even if the substitution were found to be germane to the purposes of the original bills, the hasty consideration of those substitutes may not comport with the constitutional mandates of this state . . . These expedited legislative actions failed to provide an adequate opportunity for the public to respond to, or be aware of, the content of the proposed legislation."

BUT SHE DENIED Lauve's effort to overthrow the 1967 law on recalls, which has a 90-day "stale signature" provision.

A Senate bill originally dealt with registration times, and the House added the recall limitation.

But Gilbert found that "each time a bill is amended, it need not go through the 'five-day/three-readings' process all over again as long as the added provisions do not substantially alter the bill's intent."

"Wrong," commented Lauve. "The original bill deals with office hours to register voters. A long way to adding a 90-day limit to a constitutional right."

Lauve noted with satisfaction, however, that four Republican state representatives had raised the question of the legislative rush with Attorney General Frank Kelley, who declined to rule on the point.

WHAT THE petition circulators have today is a favorable opinion from Judge Gilbert saying the 1973 Michigan Legislature acted too hastily in passing two petition laws — so hastily that it violated the state constitution. She declared the laws "null and void."

Hanging in the balance are three drives to seek elections on amending the constitution:

- Oakland Prosecutor L. Brooks Patterson's petition drive for the death penalty.
- Brighton businessman Richard Chrysler's for a part-time legislature.
- The Michigan Citizens' Lobby's to restrict utilities' rights to build power plants.

At issue was the "stale signature" law, which says petition signatures must be collected within 180 days to place an issue on the ballot.

ON PAPER, the winner is plain: Fitzpatrick, a self-employed tool salesman from Troy who belongs to

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## Constitution and law

Here's what the Michigan Constitution says about legislative procedures:

"No bill shall be altered or amended on its passage through either house so as to change its original purpose."

"No bill shall . . . become a law . . . until it has been printed or reproduced and in the possession of each house for at least five days. Every bill shall be read three times in each house before the final passage thereof."

Here's the section of a 1973 law, which Judge Gilbert declared null and void:

"It shall be rebuttably presumed that the signature on a petition which proposes an amendment to the Constitution or is to initiate legislation, is stale and void if it was made more than 180 days before the petition was filed with the office of the secretary of state."

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