April 30, 2024

Via E-Mail and Hand Delivery

Board of State Canvassers
Michigan Department of State
430 West Allegan Street
Lansing, Michigan 48918
File-Canvass@Michigan.gov

Re: Challenge to Candidacy of Curtis Hertel, Jr., Candidate for Michigan’s 7th Congressional District, for Submitting Defective Nominating Petitions and Affidavit of Identity

Dear Members of the Board of State Canvassers:

On behalf of Norman Shinkle of 2683 Donna Drive, Williamston, MI 48895, this complaint is submitted pursuant to MCL 168.552. Please accept this correspondence as a formal challenge to the candidacy of Curtis Hertel, Jr. as a candidate in the August 5, 2024 Primary Election for Michigan’s 7th Congressional District.

INTRODUCTION

Any high-school civics student should be able to tell you that “U.S. Congress” is not “the title” of an elected “office.” Rather, it is the name of an entire branch of the federal government. A candidate does not comply with the plain language of the Michigan Election Law by purporting to run for the office of “U.S. Congress” because no such office exists. The obviousness of this concept is further revealed by considering other branches of government that are composed of multiple elected offices. For instance, when a candidate runs for state senator or state representative in the Michigan Legislature, she is not running for “the legislature.” Likewise, when a candidate runs for judge of a district court or a circuit court in Michigan, she is not running for “the judiciary.” “Legislature” and “judiciary”—like “U.S. Congress”—are branches of government, not particular offices within a branch of government.

Yet Curtis Hertel, Jr. appears to think otherwise. The affidavit of identity and the nominating petitions Hertel submitted to the Bureau of Elections under the Michigan Election Law
declare that he is running for “the office” of “U.S. Congress.”¹ His documents thus fail to meet the basic legal requirements, as explained below, to gain ballot access. And, while one can speculate about Hertel’s apparent lack of basic civic awareness, as a matter of law Hertel’s errors in his affidavit of identity and nominating petitions are fatal. These facts thus tee up a very simple, yet central, question for any purported candidate’s campaign for elected office: must a candidate actually know which office he seeks? Because the Michigan Election Law answers a resounding “yes”—and Hertel failed to do so—he must be excluded from the August 6, 2024 primary ballot.

FACTUAL BACKGROUND

From what may be gleaned on the internet, Curtis Hertel (“Hertel”) apparently wants to represent Michigan’s 7th District in the United States House of Representatives. See, e.g., Ballotpedia, Curtis Hertel <https://ballotpedia.org/Curtis_Hertel> (accessed April 28, 2024). Pursuing that goal, he filed an affidavit of identity and 278 nominating petition sheets in March 2024 to be listed as a candidate on the Democratic Party’s August 6, 2024 primary ballot. Ex. 1 (Hertel’s Affidavit of Identity); Ex. 2 (Hertel’s Nominating Petitions). Hertel’s affidavit of identity and nominating petitions, however, are fatally defective.

STANDARD OF DECISION

For a person to appear on a primary election ballot, he must—among other things—file an affidavit of identity that complies with state election law. See MCL 168.558(1) & (4); and MCL 168.550. Importantly, “[a]n officer shall not certify to the board of election commissioners the name of a candidate who fails to comply with [MCL 168.558], or the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section.” MCL 168.558(4) (emphasis added); see also Stumbo v Roe, 332 Mich App 479, 481; 957 NW2d 830 (2020). Put another way, “[t]he failure to supply a facially proper affidavit of identity (AOI), i.e., an affidavit that conforms to the requirements of the Election Law, is a ground to disqualify a candidate from inclusion on the ballot.” Stumbo, 332 Mich App at 481.

More broadly, the Michigan “Supreme Court has instructed that a candidate for elected office must strictly comply with the preélection form and content requirements identified in the Michigan Election Law, MCL 168.1 et seq., in the absence of any statutory language expressly indicating that substantial compliance with the statute’s requirements suffices.” Stumbo 332 Mich App at 481 (emphasis added). Even if some people would characterize an instance of non-compliance as “a ‘small detail’ that should be overlooked,” such a position is “misplaced.” Berry v Garrett, 316 Mich App 37, 51; 890 NW2d 882 (2016). It is not the executive branch’s role or the judicial branch’s role to make policy decisions regarding which of the Legislature’s mandates can be ignored as insignificant.” Berry, 316 Mich App at 51. Instead, when a person’s affidavit of identity is “facially invalid,” election officials are “required by law to refrain from certifying” such

¹ Curiously, the website for Hertel’s candidacy is https://www.hertelformichigan.com. That aligns with how he has labeled his campaign on his website (“Curtis Hertel for Michigan”) and the name of his campaign finance committee (“Hertel for Michigan”). By all accounts, Hertel is presenting himself as a candidate for a statewide office. That is at a minimum confusing – if not intentionally deceptive – because none of Michigan’s districts for the U.S. House of Representatives are statewide districts.

Candidates for representative in Congress are held to the same standard. For a person to appear on a primary election ballot, he *must*—among other things—“have filed nominating petitions according to the provisions of” the Michigan Election Law. MCL 168.550. Additionally, a person *must strictly comply* with Michigan’s election laws that govern nominating petitions. See *Stand Up For Democracy v Secretary of State*, 492 Mich 588, 602; 822 NW2d 159 (2012) (opinion by M.B. Kelly, J.) (emphasis added); *Stand Up*, 492 Mich at 620 (Young, C.J., concurring in part and dissenting in part); *Stand Up*, 492 Mich at 639–40 (Markman, J., concurring in part and dissenting in part). Accordingly, for a person to appear on a primary election ballot, he must also file nominating petitions that *strictly* comply with these applicable statutes.

**ARGUMENT**

I. **Hertel’s affidavit of identity is facially invalid because it is missing a mandatory piece of information – the title of the office sought.**

Hertel has not complied with the Michigan Election Law—full stop. For an affidavit of identity to be facially valid, it must—among other things—include “the title of the office sought.” MCL 168.558(2) (emphasis added); *Stumbo*, 332 Mich App at 485. “The title” is undoubtedly a particular title. *Robinson v City of Detroit*, 462 Mich 439, 462; 612 NW2d 307 (2003) (observing that “the” is the “definite article” having “a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an” (quoting *Random House Webster’s College Dictionary*, p 1382)). And “the office” is a specific office. *Id.* Thus, a correctly identified “title” of a specified “office sought” must be properly identified. And, though this body is bound to “strictly” apply the law, Hertel’s error is not a “minor” or “insignificant” mistake: citizens whose signatures are sought as part of the nominating process deserve to have it precisely expressed exactly which “office” they are supporting a candidate for before they affix their signatures to these legally required documents.

Hertel failed to meet this basic legal requirement. Here, Hertel’s affidavit of identity lists solely the “U.S. Congress” as “the title of the office sought.” MCL 168.558(2); Ex. 1 (Hertel’s Affidavit of Identity). But there is no such “title” for a particular “office.” Indeed, while Hertel might wish to float between both chambers of our federal bicameral legislative body (i.e., the “U.S. Congress”), “U.S. Congress” is simply not an office. And because it is not an office, Hertel’s affidavit of identity is facially invalid because it is missing a mandatory piece of information. Moreover, because Hertel “fail[ed] to comply with [MCL 168.558],” the Michigan Election Law requires that “[a]n officer shall not certify to the board of election commissioners [his] name.” MCL 168.558(4) (emphasis added).
A. “U.S. Congress” is not equivalent to the “U.S. House of Representatives.”

1. The United States Constitution recognizes that “U.S. Congress” is not interchangeable with “U.S. House of Representatives.”

“Bicameralism”—or having a two-house legislature—is a basic feature of American government. See, e.g., The Federalist No. 52 (Madison), (Rossiter Ed., 1961), pp 293–98 (describing the U.S. House of Representatives); see also The Federalist No. 62 (Madison) (Rossiter Ed., 1961), pp 344–50 (describing the U.S. Senate). Accordingly, the United States Constitution draws a material distinction between “Congress” and the “House of Representatives.” For example, the first clause of the first section of the first article of the Constitution states plainly that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States” and that Congress “shall consist of a Senate and House of Representatives.” US Const, art I, § 1 (emphasis added). And that bicameralism is further reflected elsewhere throughout Article I. See, e.g., US Const, art I, § 7; INS v Chadha, 462 US 919, 951–52 (1983).

This may be news to Hertel, but Congress has two distinct components: the Senate and the House of Representatives. Thus, naming merely “Congress”—or even the “U.S. Congress”—does not even identify the correct body (the U.S. House of Representatives or, alternatively, the U.S. Senate) let alone the correct “office.” The Supreme Court of the United States has affirmed this simple fact that Congress has two constitutive bodies—the Senate and the House of Representatives—and a single one of those constitutive bodies “is not ‘the Congress.’” Wright v United States, 302 US 583, 587 (1938). Instead, when the Constitution refers to “Congress,” it is referencing “the entire legislative body consisting of both Houses.” Wright, 302 US at 588 (emphasis added). And “[n]owhere in the Constitution are the words ‘the Congress’ used to describe a single House.” Id. (emphasis added).

2. Congress itself recognizes that “U.S. Congress” is not interchangeable with “U.S. House of Representatives.”

Like the U.S. Constitution, federal laws recognize the difference between “Congress” and the “House of Representatives.” For instance, federal law requires that “[a]ll votes for Representatives in Congress must be by written or printed ballot, or voting machine the use of which has been duly authorized by the State law.” 2 USC § 9 (emphasis added). Additionally, federal law provides “[t]he salaries of Representatives in Congress, Delegates from Territories, and Resident Commissioners, elected for unexpired terms, shall commence on the date of their election and not before.” 2 USC § 5304 (emphasis added).

Even the U.S. Capitol Visitor Center and the information it shares with school children on a field trip or to visitors from around the world describes “Congress” as:

[A] bicameral legislature divided into two equal institutions: the House of Representatives and the Senate. Each state sends elected representatives and senators to Congress. Although the House and the Senate are structured differently and have their own roles and responsibilities, they work together to pass legislation. No bill can become a law
without passing both houses of Congress. [U.S. Capitol Visitor Center, About Congress https://www.visitthecapitol.gov/explore/about-congress#:~:text=Congress%20is%20a%20bicameral%20legislature,represenatives%20and%20senators%20to%20Congress (accessed April 28, 2024) (emphasis added).]


3. The Michigan Constitution recognizes that “U.S. Congress” is not interchangeable with “United States House of Representatives.”

Here in Michigan, the people embodied in the state constitution their understanding that the “U.S. Congress” and the “United States House of Representatives” are not equivalent. The voters—through a ballot proposal—amended Michigan’s Constitution to express that “[n]o person shall be elected to office as representative in the United States House of Representatives more than three times during any twelve-year period” and that “[n]o person shall be elected to office as senator in the United States Senate more than two times during any twenty-four-year period.” Const 1963, art 2, § 10 (emphasis added); see also Const 1963, art 2, § 10 (“The people of Michigan hereby state their support for the aforementioned term limits for members of the [(a)] United States House of Representatives and [(b)] United States Senate.”) (emphasis added). Nowhere does Michigan’s Constitution mention “U.S. Congress” as “the title” of an “office.”

4. Michigan statutes recognize that “Congress” is not interchangeable with “United States House of Representatives.”

Likewise, at least seven Michigan statutes indicate that “U.S. Congress” is not interchangeable with “U.S. House of Representatives.” Those statutes declare the following:

1. “A person shall not be a Representative in Congress unless the person has attained the age of 25 years and been a citizen of the United States for 7 years, and is, when elected, an inhabitant of that state in which he or she shall be chosen, as provided in section 2 of article I of the United States Constitution.”

2. “A general primary election of all political parties shall be held in every election precinct in this state on the Tuesday succeeding the first Monday in August preceding every general November election, at which time the qualified and registered electors of each political party within every congressional district

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2 In United States Term Limits v Thornton, 514 US 779, 837; 115 S Ct 1842; 131 L Ed 2d 881, 921 (1995), the U.S. Supreme Court concluded that states lacked the authority to impose term limits on U.S. Senators and members of the U.S. House of Representatives. Thornton, 514 US at 827, 837–38.

3 Importantly, the Michigan Election Law cites directly to the U.S. Constitution, which—again—draws a clear distinction between the “office” of U.S. Representative in Congress and U.S. Senator.
shall vote for party candidates for the office of representative in congress to be filled at said election[.]” MCL 168.132 (emphasis added).

3. “In order for the name of a person as a candidate for nomination by a political party for the office of representative in congress to appear under a particular party heading on the official primary ballot in the election precincts of a congressional district, a nominating petition shall have been signed by a number of qualified and registered electors residing in the district as determined under section 544f.” MCL 168.133 (emphasis added).

4. “After the filing of a nominating petition by or in behalf of a proposed candidate for representative in congress, such candidate shall not be permitted to withdraw unless a written notice of withdrawal is served on the official with whom the petition was filed or his duly authorized agent not later than 4 o’clock, eastern standard time, in the afternoon of the third day after the last day for filing such petitions.” MCL 168.134 (emphasis added).

5. “Any person duly elected to the office of representative in congress who desires to resign shall file a written notice containing the effective date of such resignation with the governor and a copy with the secretary of state.” MCL 168.144 (emphasis added).

6. “The office of representative in congress shall become vacant on the happening of any of the following events before the expiration of the term of such office: The death of the incumbent; his resignation; his removal from office; the decision of a competent tribunal declaring void his election; or his refusal or neglect to take his oath of office.” MCL 168.146 (emphasis added).

7. “The votes cast for a candidate for nomination or election to the office of representative in congress at a primary or general election shall be subject to recount as provided in chapter 33.” MCL 168.148 (emphasis added).

Each of these Michigan laws clearly defines the “office” as “representative in congress,” and indicate that the Michigan Legislature understands that “U.S. Congress” is not interchangeable with “U.S. House of Representatives.” See SBC Health Midwest, Inc v City of Kentwood, 500 Mich 65, 73, n 26; 894 NW2d 535 (2017) (laws treating the same subject should be interpreted harmoniously). Yet Hertel seems unfamiliar with how the body he was a member of for eight years has repeatedly described the office he seemingly wants to hold.5

4 Other Michigan statutes that indicate that “U.S. Congress” is not equivalent to “U.S. Representative” include the following: MCL 168.135 (“representative in congress”); MCL 168.136 (“the office of representative in congress”); MCL 168.143 (“The term of office of a representative in congress shall be 2 years beginning on the third day of January next following his election.”).

5 Riding his family’s coattails, Hertel was a member of Michigan’s Senate from 2015 to 2022. Library of Michigan, Legislator Details for Curtis Hertel, Jr. https://mdoe.state.mi.us/legislators/Legislator/LegislatorDetail/5444 (accessed April 28, 2024).
B. Hertel’s affidavit of identity is missing a required piece of information; his name, therefore, cannot be certified to the Board of Election Commissioners, and he cannot appear on the primary ballot.

The law is clear: “An officer shall not certify to the board of election commissioners the name of a candidate who fails to comply with [MCL 168.558][.]” MCL 168.558(4) (emphasis added). Substantial compliance is insufficient. Rather, “[c]andidacy applicants must strictly comply with the content requirements of the Michigan Election Law.” Moore, 337 Mich App at 732 (emphasis added). If required information is missing from a candidacy applicant’s affidavit of identity, that applicant is ineligible to appear on a ballot.6 Berry, 316 Mich App at 44, 50–51.

Among other things, a candidacy applicant’s “affidavit of identity must contain . . . the title of the office sought” and “the jurisdiction, district, circuit, or ward.” MCL 168.558(2) (emphasis added). But, as explained earlier in Part I.A, Hertel failed to include the title of an office that exists under federal or Michigan law. Instead, he purportedly seeks the office of “U.S. Congress.” His affidavit of identity, therefore, is missing a required piece of information. That renders it invalid. MCL 168.558.

Accordingly, as Director Brater so emphatically acknowledged Section 558’s mandates back in 2022, “[a]n officer shall not certify [Hertel’s name] to the board of election commissioners.” MCL 168.558(4). And Hertel cannot and must not appear on the Democratic Party’s August 6, 2024 primary ballot. See id.

II. Every nominating petition sheet that Hertel submitted is invalid. He cannot qualify for the primary ballot.

The bottom line is simple: nothing Hertel submitted complies with the Michigan Election Law. And, if the law is even-handedly applied, he must be disqualified from the Democratic Party’s primary ballot as a result.

A. Nominating petition sheets must list the correct title of office.

Each candidate nominating petition sheet must include “the office for which petitions are signed.” MCL 168.544c(1); Christenson v Secretary of State, 336 Mich App 411, 421; 970 NW2d 417 (2021) (“[MCL 168.544c(1)] requires candidates, among other things, to circulate for signing by the electors a nominating petition that states their name, address, and the office for which the petitions are signed”)(emphasis added)). When a sheet is missing the title of the office the candidate seeks, that omission renders the entire sheet invalid. See MCL 168.550 (“No candidate shall have his name printed upon any official primary election ballot of any political party in any voting precinct in this state unless he shall have filed nominating petitions according to the provisions of this act[.]” (emphasis added)); Stand Up, 492 Mich at 602 (opinion by M.B. Kelly,

6 This body, and the lawyers (particularly Director of Elections Jonathan Brater) who serve on it, would be wise to remember the rigidity applied to Section 558 last cycle, which resulted in an unprecedented number of Republican primary candidates being disqualified. Because this body must even-handedly apply the same law regardless of partisan politics, it is anticipated the same rigidity will be applied here.
J.) (emphasis added); *Stand Up*, 492 Mich at 620 (Young, C.J., concurring in part and dissenting in part); *Stand Up*, 492 Mich at 639–40 (Markman, J., concurring in part and dissenting in part).

B. *Every* nominating petition Hertel submitted contains an *invalid* title of office.

Everything submitted by Hertel is invalid. According to his affidavit of identity and his nominating petitions, Curtis Hertel purportedly seeks the office of “U.S. Congress.” Ex. 1 (Hertel’s Affidavit of Identity); Ex. 2 (Hertel’s Nominating Petitions). But, as explained earlier in Parts I(A)–(B), “U.S. Congress” is not an “office” recognized under federal or Michigan law—it is a branch of government.

Each of Hertel’s nominating petitions, therefore, are missing a *mandatory* piece of information—“the title” of “the office” he actually seeks. That error is fatal for Hertel’s election effort because it renders each of his nominating petitions invalid. See MCL 168.550 (“No candidate shall have his name printed upon any official primary election ballot of any political party in any voting precinct in this state *unless he shall have filed nominating petitions according to the provisions of this act*[,]” (emphasis added)); *Stand Up*, 492 Mich at 602 (opinion by M.B. Kelly, J.) (emphasis added); *Stand Up*, 492 Mich at 620 (Young, C.J., concurring in part and dissenting in part); *Stand Up*, 492 Mich at 639–40 (Markman, J., concurring in part and dissenting in part). And, with each of the nominating petitions invalid, he has zero signatures of qualified and registered electors—i.e., exactly 1,000 fewer signatures than he was statutorily required to submit. MCL 168.544f. In short, Hertel failed to present any valid signatures for certification on the primary ballot. He is ineligible to appear on the Democratic Party’s August 6, 2024 primary ballot. This body must not certify him for that ballot.

**CONCLUSION AND RELIEF SOUGHT**

Hertel (we think) seeks to be on the Democratic Party’s August 6, 2024 primary ballot as a candidate for the office of United States House of Representative for Michigan’s 7th District. Hertel, however, has made two independently *fatal* errors in pursuit of that goal. *First*, Michigan law *required* his affidavit of identity to include “the title of the office sought.” MCL 168.558(2). He failed to satisfy that requirement because he listed a purported office that flat-out does not exist. *Second*, Michigan law *required* Hertel to (a) list the title of the office he is seeking on his nominating petitions, MCL 168.544c, and (b) file a minimum of 1,000 “signatures of qualified and registered electors” via *valid* nominating petitions, MCL 168.544f. Hertel failed to satisfy those requirements because his nominating petitions listed an office that does not exist. That error invalidated *all* of his nominating petitions and leaves him with zero signatures of qualified and registered electors—well below the 1,000 minimum he needed.
Strict compliance with Michigan’s election laws is required. Hertel failed to comply with Michigan’s election laws in two distinct ways. Accordingly, Michigan law requires that his name not be certified to the board of election commissioners and that he not appear on the Democratic Party’s August 6, 2024 primary ballot.

Respectfully submitted,

[Signature]

Charles R. Spies
Robert L. Avers
Counsel to Complainant