STATE OF MICHIGAN
IN THE SUPREME COURT

PROMOTE THE VOTE 2022,

Plaintiff,

v

THE BOARD OF STATE CANVASSERS, JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in his official capacity as Director of Elections,

Defendants.

SUPREME COURT NO. 164755

Christopher M. Trebilcock (P62101)
Vincent C. Sallan (P79888)
CLARK HILL PLC
Attorneys for Plaintiff
500 Woodward Avenue
Detroit, MI 48226
313-965-8300
ctrebilcock@clarkhill.com
vsallan@clarkhill.com

Jonathan B. Koch (P80408)
D. Adam Tountas (P68579)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Intervenor Party Defend Your Vote
100 Monroe Center, N.W.
Grand Rapids, MI 49503
616-774-8000
jkoch@shrr.com
dtountas@shrr.com

Eric E. Doster (P41782)
DOSTER LAW OFFICES, PLLC
Attorney for Defend Your Vote
2145 Commons Parkway
Okemos, MI 48864
(517) 977-0147
eric@ericdoster.com

Proposed Intervening Party Defend Your Vote's Answer and Affirmative Defenses and Reservation to Rights in Relation to Plaintiff Promote The Vote 2022's Complaint for Immediate Mandamus Relief and Declaratory Judgment and Motion for Order to Show Cause and Immediate Consideration

NOW COMES Proposed Intervenor, Defend Your Vote ("DYV"), by and through its counsel, Smith Haughey Rice & Roegge, P.C. and Doster Law Offices, PLLC, and for its proposed Answer to the Plaintiff's Complaint for Immediate Mandamus Relief and Declaratory Judgment and Motion for Order to Show Cause and Immediate Consideration, hereby states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff PTV22 is a duly formed ballot question committee registered pursuant to the Michigan Campaign Finance Act, MCL 169.201, *et seq.* Its registered address is 600 W. St. Joseph St., Ste. 3G, Lansing, Michigan 48933. PTV22 sponsored and organized the Proposal to amend the Michigan Constitution to enshrine and protect voting rights for all qualified voters in Michigan, including military voters, and to ensure that elections are certified solely based on the actual votes cast. It submitted more than 664,000 signatures support of its proposal.

RESPONSE: Admitted that Plaintiff is a duly formed ballot question committee, and that its registered office address as identified above. The balance of these allegations are denied as untrue in the manner and form alleged.

2. Defendant Board is a public body created by Const 1963, art 2, § 7. The Board is tasked with, among other things, canvassing initiative petitions to amend the constitution "to ascertain if the petitions have been signed by the requisite number of qualified and registered voters." MCL 168.476(1).

RESPONSE: Admitted that the Board is a public body tasked with certain legal obligations, including, among other things, determining whether the form of a petition is valid under Michigan law.

3. Defendant Secretary Benson is Michigan's Secretary of State. The Secretary of State is a publicly elected position created by the 1963 Michigan Constitution. *See* 1963 Const, art 5, §§ 3, 21. Secretary Benson is sued in her official capacity and only to the extent her participation in this case is necessary for relief granted by the Court.

RESPONSE: Admitted.

4. Defendant Director Brater is Michigan's Director of Elections and is vested with the authority to administer Michigan's election laws under the supervision of the Secretary of State. Director Brater is sued in his official capacity and only to the extent his participation in this case is necessary for relief granted by the Court.

RESPONSE: Admitted.

5. This Court has discretionary jurisdiction "as provided by the constitution or by law." MCR 7.303(B)(6); *see also* MCR 3.305(A)(1)–(2) (noting that a statute or rule may allow mandamus actions in "another court" besides circuit courts and the Court of Appeals).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

6. MCL 600.217(3) gives this Court the "jurisdiction and power to issue, hear, and determine writs of . . . mandamus."

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

7. MCL 168.479 governs the review of a challenge to a Board decision and provides as follows:

> (1) Notwithstanding any other law to the contrary and subject to subsection (2), any person who feels aggrieved by any determination made by the board of state canvassers may have the determination reviewed by mandamus or other appropriate remedy in the supreme court.
>
> (2) If a person feels aggrieved by any determination made by the board of state canvassers regarding the sufficiency or insufficiency of an initiative petition, the person must file a legal challenge to the board's determination in the supreme court within 7 business days after the date of the official declaration of the sufficiency or insufficiency of the initiative petition or not later than 60 days before the election at which the proposal is to be submitted, whichever occurs first. Any legal challenge to the official declaration of the sufficiency or insufficiency of an initiative petition has the highest priority

> and shall be advanced on the supreme court docket so as to provide for the earliest possible disposition.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

8. MCL 168.479(1)-(2) "provides the method of review for those persons aggrieved by any determination of the State Board of Canvassers." *Beechnau v Austin*, 42 Mich App 328, 330; 201 NW2d 699 (1972).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

9. For the same reason, venue is proper in this Court. *See Comm to Ban Fracking in Michigan v Bd of State Canvassers*, 335 Mich App 384, 396; 966 NW2d 742 (2021) ("MCL 168.479(2) is clear that any person challenging the determination made by defendant regarding sufficiency or insufficiency of an initiative petition is required to file a timely legal challenge in the Michigan Supreme Court.").

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

GENERAL ALLEGATIONS

A. The Michigan Constitution Provides the People with the Right to Amend their Constitution and Narrowly Interprets the Alter or Abrogate Publication Requirement.

10. Article 12, Section 2 of the 1963 Michigan Constitution provides the People of the State of Michigan with the right to amend their Constitution. In full, it states as follows:

> Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number

> to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.
>
> Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.
>
> The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.
>
> If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail. [*See* Const 1963, art XII, § 2.]

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

11. As this Court held over 100 years ago, "[o]f the right of qualified voters of the State to propose amendments to the Constitution by petition it may be said, generally, that it can be interfered with neither by the legislature, the courts, nor the officers charged with any duty in the premises." *Scott*, 202 Mich at 643.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

12. The Michigan Election Law provides as follows with respect to initiatives to amend the Constitution:

> If the proposal would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted, preceded by the words: 'Provisions of existing constitution altered or abrogated by the proposal if adopted'. [*See* MCL 168.482(3).]

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

13. The seminal case on whether a proposed ballot question would alter or abrogate a provision of the Michigan Constitution is *Protect Our Jobs*, which held that "an amendment only abrogates an existing provision when it renders that provision wholly inoperative" and "reaffirm[ed] our prior case law holding that an existing provision is only altered when the amendment actually adds to, deletes from, or changes the wording of the provision." *Protect Our Jobs*, 492 Mich at 773.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

14. This makes perfect sense when considering the purpose of the publication requirement, which is to inform "ordinary voters" who are not "constitutional lawyers." *Massey*, 457 Mich at 417.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

15. Writing for the majority in *Protect Our Jobs*, Justice Zahra surveyed the historical record and began the majority opinion by noting that this Court "has consistently protected the right of the people to amend their Constitution" by way of "petition and popular vote." *Protect Our Jobs*, 492 Mich at 772.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

16. Against this backdrop, the Court held that, consistent with decades of precedent, for purposes of Article 12, Section 2 of the Constitution and MCL 168.482(3), a proposed amendment alters or abrogates an existing provision of the Constitution only "if the proposed amendment would add to, delete from, or change the existing wording of the provision or would render it wholly inoperative." *Id.* at 781–82 (internal citations and quotations omitted).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

17. Stated differently, "[a] new constitutional provision simply cannot alter an existing provision (though it may abrogate an existing provision) when the new provision leaves the text of all existing provisions completely intact." *Id.* at 782. Thus, "[t]he republication requirement applies only to alteration of the actual text of an existing provision." *Id.* (citing *Massey*, 457 Mich at 418).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

18. The Court provided some examples of where republication on the basis of alteration would be required, such as if an amendment added words to an existing provision; if an amendment deleted words from an existing provision; or changed the words of an existing provision. *Id.* The Court also held that

"there is no such thing as a de facto or an indirect addition to, deletion from, or change in an existing provision. ***The fact that a proposed amendment might have a direct and obvious effect on the understanding of an existing provision is an insufficient basis from which to conclude that the proposed amendment alters an existing provision of the Constitution***." *Id.* (emphasis added).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

19. The standard for requiring republication because of an alleged abrogation of a current provision of the Constitution is even more exacting and difficult to meet. This is "[b]ecause any amendment might have an effect on existing provisions, the abrogation standard makes clear that ***republication is only triggered by a change that would essentially eviscerate an existing provision.***" *Id.* (quotations omitted and emphasis added).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

20. According to this Court in *Protect Our Jobs*, an amendment abrogates only when it renders an existing provision of the Constitution "wholly inoperative" such that it becomes a "nullity" or such that "it would be impossible for the amendment to be harmonized with the existing provision when the two provisions are read together." *Id.* at 783.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

21. Put another away, the Court is required to try to harmonize the language and "[a]n existing provision is not rendered wholly inoperative if it can be reasonably construed in a manner consistent with the new provision, i.e., the two provisions are not incompatible." *Id.*

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

22. Importantly, "when the existing provision would likely continue to exist as it did preamendment, although it might be affected or supplemented in some fashion by the proposed amendment, no abrogation occurs" and republication is thus not required. *Id.* at 783–84 ("Thus, if the existing and new provisions can be harmonized, the amendment does not render the existing provision wholly inoperative.").

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

23. These standards were again applied by this Court to reject a claim that the proposal submitted by Voters Not Politicians abrogated the oath requirement set forth in Article 11, Section 1. This Court reasoned that Voters Not Politicians' "proposal in no way 'renders [the Oath Clause] wholly inoperable.'" *Citizens Protecting Michigan's Constitution*, 503 Mich at 106, n 197 (alterations in original) (quoting *Protect Our Jobs*, 492 Mich at 773).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

24. In providing further clarity on the terms "alter" and "abrogate," this Court in *Protect Our Jobs* reinforced its holding by acknowledging that while it had to enforce constitutional and statutory

safeguards to ensure that voters are adequately informed when deciding whether to support a constitutional amendment initiative:

> the ordinary elector, not being a constitutional lawyer, would be confused rather than helped by a publication of all the other constitutional provisions which were or might be directly or only remotely, and possibly only contingently, affected by the proposed amendment. [*Protect Our Jobs*, 492 Mich at 781 (quoting *Pontiac*, 262 Mich at 344)].

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

25. The Court further noted that it had to be careful not to set forth an interpretation where the Court would so curtail the ability of the people to amend their Constitution that it would "effectively require a petition circulator . . . to secure a judicial determination of which provisions of the existing Constitution the proposed amendment would 'alter or abrogate.'" *Id.* at 781 (quoting *Ferency*, 409 Mich at 598). This is exactly what happened here.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

26. At bottom, DYV's Challenge ignored the most basic principle of constitutional interpretation that "[c]onstitutional provisions should be read as a whole, in context, and with an eye to harmonizing them so as to give effect to all." *Lucas v Wayne Cty Election Comm'n*, 146 Mich App 742, 747; 381 NW2d 806 (1985); *League of Women Voters of Mich v Secretary of State*, 333 Mich App 1, 15; 959 NW2d 1 (2020) (recognizing that every constitutional provision must be interpreted in the light of the document as a whole, and no provision should be construed to nullify or impair another).

RESPONSE: DYV denies that its Challenge was improper, or otherwise ignored the contours of Michigan law governing challenges of that kind. The balance of these allegations contain a conclusion of law to which no response is required. Furthermore, the legal authorities cited in this paragraph speak for themselves.

Any allegations drawn inconsistently with the plain wording of those authorities, or the subsequent case law interpreting them, are denied as untrue in the manner and form alleged.

27. Perhaps foreseeing a challenge such as this, this Court warned that when applying the "alter or abrogate" requirement, "arcane or obscure interpretations" should be avoided. *Massey*, 457 Mich at 420.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

B. The Board's Limited Duties Regarding Initiative Petitions.

28. The Board is a bi-partisan constitutional board created by Article 2, Section 7 of the Michigan Constitution.

RESPONSE: Admitted.

29. The Legislature has empowered the Board to enforce the Michigan Election Law's technical requirements, *see* MCL 168.1 *et seq.*, relating to the circulation and form of petitions.

RESPONSE: Admitted.

30. Board members, as constitutional officers, must take the constitutional oath of office, which states:

> All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust. [Const 1963, art 11, § 1; *see also* MCL 168.22c (requiring Board members to take the oath).]

RESPONSE: Admitted.

31. Taking this oath places on the Secretary of State and the Board no less solemn an obligation than the judiciary to consider the lawfulness and constitutionality of their every action. *See Lucas v Bd of*

Road Comm'rs, 131 Mich App 642, 663; 348 NW2d 642 (1984) (noting Governor's obligation); *see also Rostker v Goldberg,* 453 US 57, 64; 101 S Ct 2646; 69 L Ed 2d 478 (1981) (same for Congresspersons).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited in preceding paragraphs speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

32. Accordingly, Board members have a constitutional duty to ensure that their action here comports with the Constitution and Michigan law.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

33. The Board's duties and responsibilities are established by the Michigan Election law. *See* MCL 168.22(2) and MCL 168.841.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

34. Importantly, as Michigan courts have repeatedly recognized, the Board is of limited jurisdiction and can only exercise those duties provided to it by the Constitution or applicable Michigan law. *See Michigan Civil Rights Initiative v Board of State Canvassers,* 268 Mich App 506, 515–20; 708 NW2d 139 (2005) (recognizing that the Board has limited authority, which is vested only "by the Legislature, in statutes, or by the Constitution"); *Citizens for Protection of Marriage v Board of State Canvassers,* 263 Mich App 487, 493; 688 NW2d 538 (2004) ("We further conclude that the Board erred in considering the merits of the proposal. Not only did the Board have no authority to consider the lawfulness of the proposal, but it is also well established that a substantive challenge to the subject matter of a petition is not ripe for review until after the law is enacted."); *Deleeuw v State Board of Canvassers,* 263 Mich App

497, 501; 688 NW2d 847 (2004) (granting mandamus because the Board went beyond its specific statutory authority).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

35. MCL 168.22(2) says that the Board "has the duties prescribed in section 841. The board of state canvassers shall perform other duties as prescribed in this act." These responsibilities include canvassing a petition. *See* MCL 168.476.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

36. The Board must determine whether a petition's form "complies with the statutory requirements and whether there are sufficient signatures to warrant certification of the proposal." *See Citizens for Protection of Marriage*, 263 Mich App at 492.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

37. What is more, the Board's duty with respect to petitions is "limited to determining the sufficiency of a petition's form and content and whether there are sufficient signatures to warrant certification." *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 619; 822 NW2d 159 (2012); *see also Citizens for Protection of Marriage*, 263 Mich App at 492 (citing *Ferency*, 409 Mich 569; *Council About Parochiaid v Secretary of State*, 403 Mich 396; 279 NW2d 1 (1978); *Leininger v Secretary of State*, 316 Mich 644; 26 NW2d 348 (1947)).

RESPONSE: Denied that the Board's duties are limited to those identified in this paragraph. By way of further response, DYV asserts that the legal authorities cited herein

speak for themselves, and that any allegations drawn inconsistently with those authorities are hereby denied as untrue in the manner and form alleged.

38. The Board's canvassing duties are carried out by staff at the Bureau of Elections under the supervision of the Director of Elections. MCL 168.32(1).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

39. Stated differently, the Board determines whether the petition has enough valid signatures and whether the petition is in the proper form.

RESPONSE: Admitted that Board is obligated, under Michigan law, to determine whether a petition is in the proper form. By way of further response, DYV affirmatively states that the Plaintiff's Petition wasn't in the proper form and, as such, the Board's failure to certify the same for was properly excluded from the November 2022 ballot was proper.

40. These duties are ministerial in nature, and in reviewing a petition the Board may not examine questions regarding the merits or substance of a proposal. *Leininger v Secretary of State*, 316 Mich 644, 655–656; 26 NW2d 348 (1947); *see also Gillis v Bd of State Canvassers*, 453 Mich 881; 554 NW2d 9 (1996); *Automobile Club of Michigan Committee for Lower Rates Now v Sec'y of State*, 195 Mich App 613, 624; 491 NW2d 269 (1992) ("[T]he Board of State Canvassers possesses the authority to consider questions of form."). And in performing its function, the Board may not look beyond the four corners of the petition. *Michigan Civil Rights Initiative*, 268 Mich App at 519–520.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

41. Indeed, DYV offered no statutory or constitutional authority permitting the Board to consider an "alter or abrogate" challenge. This is because there is no such authority. *Citizens Protecting Michigan's Const v Sec'y of State*, 324 Mich App 561, 585; 922 NW2d 404, *aff'd*, 503 Mich 42; 921 NW2d

247 (2018) ("because the determinations of whether a proposal is a general revision or an amendment to the Constitution and whether a proposal serves more than a single purpose require judgment, they are not ministerial tasks to be performed by the Secretary or the Board.").

RESPONSE: Denied that DYV offered no statutory or constitutional authority in support of its Challenge to the Plaintiff's Petition. Moreover, the form of the Plaintiff's Petition was, and continues to be, both invalid and improper. The balance of these allegations state a legal conclusion to which no response is required.

42. As the Court of Appeals held in *Michigan Civil Rights Initiative*, "it is clear to us that the Legislature has only conferred upon the Board the authority to canvass the petition 'to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.'" 268 Mich App at 519 (quoting MCL 168.476(1); *see also Unlock Michigan v Bd of State Canvassers*, 507 Mich 1015; 961 NW2d 211 (2021) ("The Board's duty with respect to petitions is limited to determining the sufficiency of a petition's form and content and whether there are sufficient signatures to warrant certification. In reviewing the petition signatures, the Board shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.") (internal quotations and citations omitted).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

43. MCL 168.482(3) does require that a petition form state which portions of the constitution would be altered or abrogated by an initiative. However, the Board's duty in this respect is purely ministerial – did the petition sponsor comply by listing what sections of the constitution it believed were altered or abrogated? As the Court of Appeals held a mere four years ago, if there is a dispute in this regard, such a dispute is not for the Board or Secretary of State to resolve. *Citizens Protecting Michigan's Const*, 324 Mich App at 585.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

44. In *Unlock Michigan*, this Court specifically rejected a challenge made to the form of a petition after the committee submitted signatures to the Bureau because "the Board approved the form and content of the petition in July 2020." *Unlock Michigan*, 507 Mich 1015.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

45. Thus, the Board's conduct in considering DYV's alter-or-abrogate challenge was an *ultra vires* act.

RESPONSE: Denied as untrue.

C. The Secretary of State's Limited Role in the Initiative Process.

46. The Legislature has delegated the task of conducting proper elections to the Secretary of State, an elected Executive-branch officer, and the head of the Department of State. *See* Const 1963, art 2, § 4, art 5, §§ 3, 9. Section 21 of the Michigan Election Law makes the Secretary the "chief election officer" with "supervisory control over local election officials in the performance of their duties under the provisions of this act." *See* MCL 168.21.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

47. But the Secretary of State's duties with respect to initiative petitions is limited. *Citizens Protecting Michigan's Constitution*, 280 Mich App at 286.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities

cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

48. The Secretary acts as the filing official to receive petitions for referendum, initiative, and constitutional amendment. MCL 168.471.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

49. The first task attendant to the Secretary's office is to "immediately" notify the Board upon the filing of any petition. MCL 168.475(1).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

50. Thereafter, if the Board certifies the sufficiency of the petition and approves the statement of purpose, the Secretary certifies the statement of purpose to the counties, MCL 168.648, and communicates the ballot wording to the media, counties, and local precincts. MCL 168.477(2), MCL 168.480.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

D. The Director of Elections' Limited Role in the Initiatives Process.

51. The Director of Elections is appointed by the Secretary of State and supervises the Bureau of Elections. MCL 168.32(1), MCL 168.34.

RESPONSE: Admitted.

52. The Director of Elections is "vested with the powers and shall perform the duties of the secretary of state under . . . her supervision, with respect to the supervision and administration of the election laws." *Id.*

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

53. As "a nonmember secretary of the state board of canvassers," the Director of Elections supervises the Bureau as it assists the Board in canvassing petitions, like the Proposal here. *Id.*

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited in preceding paragraphs speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

54. The Director is also responsible for preparing ballot language for proposals with the approval of the Board. MCL 168.32.

RESPONSE: Admitted.

E. The Board Previously Approved the Form of the Petition for PTV22's Proposal, PTV22 Submitted Over 664,000 Signatures in Support of the Proposal, and the Bureau of Elections Canvassed the Signatures and Found that PTV22 Submitted More than Enough Signatures in Support of its Proposal.

55. On July 11, 2022, PTV22 submitted over 664,000 signatures in support of the Proposal.

RESPONSE: DYV neither admits nor denies the allegations contained in this paragraph because it lacks knowledge or information sufficient to form a belief as to the truth of the same. PTV22 is therefore left to its proofs.

56. The Proposal would, among other things, amend the Constitution to add a fundamental right to vote; extend the deadline for military and overseas voters; add a voter identification requirement; provide for single application, dropboxes, postage, and ballot tracking for absentee voting; guarantee early, in-person voting; require disclosure of charitable donations for election administration; and require election certification based on official records.

RESPONSE: Admitted that PTV22's Proposal would, if adopted, fundamentally change the way we do elections in Michigan, and, in the course of doing so, abrogate several provisions of our current Constitution. The balance of these allegations are denied as untrue in the manner and form alleged.

57. Previously, on February 11, 2022, the Board approved the form of the petition for the Proposal. (*See* Ex. 2, 2/11/22 Meeting Minutes.)

RESPONSE: Denied as untrue that the form of PTV22's Petition has ever been fully "approved" by the Board.

58. The Bureau of Elections Staff also previously approved the form of the Proposal.

RESPONSE: Denied as untrue in the manner and form alleged.

59. No one challenged the form of the Proposal's petition at that time claiming that it violated the alter-or-abrogate provision even though opponents challenged other parts of the form (including Mr. Avers on behalf of Secure MI Vote, whom Chair Daunt relied upon for legal advice during the Board meeting).

RESPONSE: Denied as untrue that the form of PTV22's Petition has ever been fully "approved" by the Board. The balance of these allegations are denied as untrue in the manner and form alleged.

60. Indeed, the Staff Report, DYV, and members of the Board itself all agree that the Proposal contains sufficient signatures to warrant certification to the ballot. And as to whether the petition is in the proper form, PTV22's petition was pre-approved by the Board of State Canvassers *before* being placed in circulation. As this Court noted in *League of Women Voters of Michigan v Secy of State*, 508 Mich 520, 567–68; 975 NW2d 840, 866 (2022), "the Board of State Canvassers, while not required to do so by statute, has long offered the opportunity to ballot proposal committees to have their petitions preliminarily approved as to form prior to circulation in order to prevent the late discovery of defects in those forms—discoveries that, without preapproval, might not be detected until after circulation is complete."

RESPONSE: Denied as untrue that the form PTV22's Petition was "pre-approved" by the Board. It is also denied as untrue that DYV agrees that the Proposal warrants certification to the ballot. To the contrary, the form of PTV22's Petition is legally invalid. As such, the Board's failure to certify PTV22's Proposal for the

November 2022 ballot was justified and appropriate. The balance of this paragraph contains legal conclusions to which no response is required.

61. PTV22 relied on the Board's pre-approval of their petition form and expended an enormous amount of time, effort and resources to gather over 640,000 signatures, only to face a dilatory challenge based on an alleged defect in the pre-approved form. The time to lodge this challenge was before the Board granted its pre-approval of PTV22's form, not "after circulation is complete." *Id.* A challenge brought to the Board during the pre-approval process would "provid[e] the judicial branch a better opportunity to provide meaningful judicial review to those allegedly aggrieved by decisions of the Bureau of Elections and the Board of State Canvassers … The current process provides very little time between decisions of the Board of State Canvassers and the date ballots must be finalized for printing." *Johnson v Bd of State Canvassers*, No. 164461, 2022 WL 1837990 (Mich, June 3, 2022) (Zahra, J concurring). Weighty ballot access issues like these deserve ample time for briefing, argument, and adjudication.

RESPONSE: Denied that DYV's Challenge to the form of PTV22's petition was "dilatory" or otherwise improper. Waiver is not a relevant concept. Under Michigan law, it's incumbent on the petitioner to submit petition papers that comply with the law. That didn't happen here. The balance of these allegations contain legal conclusions to which no response is required.

62. After completing its canvassing activities, the Bureau of Elections released its Staff Report on August 25, 2022. (Ex. 1, Staff Report.) As that Staff Report indicates PTV22 only needed to submit 425,059 valid signatures and the Bureau of Elections concluded that PTV22 submitted **507,780 valid signatures at a confidence level of 100%**. (*Id.*)

RESPONSE: DYV asserts hat the Bureau's Staff Report speaks for itself. Any allegations drawn inconsistently with the plain wording of that document are denied as untrue in the manner and form alleged.

F. DYV Submits a Challenge and PTV22 Submits a Response Showing the Challenge was Legally and Factually Defective.

63. On August 18, 2022, DYV submitted a Challenge – dressed up as a challenge to the form of the Proposal's petition – alleging that PTV22 failed to list five provisions of the Constitution that the

Proposal would allegedly abrogate. (Ex. 3, Challenge.) PTV22 submitted a robust response showing that each and every challenge was factually and legally deficient. (Ex. 4, PTV22's Response to DYV's Challenge.)

RESPONSE: Admitted that DYV challenged the form of PTV22's Petition. It's further admitted that PTV22's Petition failed to list five constitutional provisions that its Proposal, if adopted, would abrogate. Denied as untrue that PTV22's response to DYV's Challenge was "robust," or otherwise established anything of consequence or merit in relation to the same.

The Proposal Would Not Eliminate Election Day.

64. DYV asked the Board to deny certification based on the absurd argument that Election Day would be rendered "wholly inoperative" by the Proposal.

RESPONSE: Admitted that DYV asked the Board to deny certification based on the harm PTV22's Proposal, if adopted, would do to the provisions of our Constitution dealing with Election Day. Denied that DYV's position in that regard was absurd.

65. Specifically, the Challenge alleged that the Proposal would "abrogate" Article 2, Section 5 of the Constitution, the "Election Day" clause. Governing the "Time of Elections," Article 2, Section 5 states:

> Except for special elections to fill vacancies, or as otherwise provided in this constitution, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected. [Const 1963, art 2, § 5.]

RESPONSE: Admitted.

66. While conceding that Michigan has long permitted absentee voting, which permits registered voters to cast their votes months prior to Election Day, DYV nonetheless contended that the Election Day clause somehow requires **ALL** voting to occur on a single day: "Allowing for the casting of votes ten days before Election Day is wholly incompatible with the Election Day provision, which requires the casting of votes on Election Day." (*See* Ex. 3, DYV's Challenge at 10.)

RESPONSE: Denied as untrue in the manner and form alleged.

67. DYV further claimed that the Proposal "would drain the Election Day provision of all meaning, rendering it wholly inoperative with respect to its current role in Michigan's democracy." (*Id*. at 12.) DYV's claim of abrogation – its first argument, so presumably the one DYV believed to be its strongest – was and remains nonsensical.

RESPONSE: Admitted that DYV argued the Proposal would render the portion of our Constitution dealing with "Election Day" wholly inoperative. The balance of the allegations in this paragraph are denied as untrue.

68. While citing to an inapplicable Maryland case as support for its novel theory, DYV ignored controlling and recent case law in Michigan.

RESPONSE: Denied as untrue in the manner and form alleged.

69. In 2018, Michigan voters approved Proposal 3, which granted all Michigan voters the constitutional right to vote by absent-voter ballot without stating a reason during the 40 days preceding an election. It is worth nothing that no one challenged Proposal 3 on the basis that it violated the alter-or-abrogate requirement, including with respect to any of the five provisions at issue here.

RESPONSE: Admitted that, in 2018, Proposal 3 was approved by Michigan voters. The balance of these allegations, including any insinuation that Proposal 3's approval is the least bit relevant to this dispute, are denied as untrue in the manner and form alleged.

70. That right was incorporated into Article 2, Section 4, which addresses the place and manner of elections. In *League of Women Voters*, a voting rights organization filed a complaint for a writ of mandamus with the Court of Appeals alleging the statutory requirement that absentee ballots had to be received by 8 p.m. on Election Day in order to be counted violated the Constitution and that any ballots mailed by Election Day should be counted.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

71. The Court analyzed what it meant to "vote" in the context of our Constitution and laws. Rejecting the argument that an absentee ballot receipt deadline of 8:00 p.m. on Election Day unconstitutionally violated the right to vote, the Court held that the word "vote" has many meanings and "refers to the entire process" of casting a ballot over time, not a single act on a single day. *League of Women Voters*, 333 Mich App at 21-22. That holding applies here.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

72. Nonetheless, DYV tries to equate "voting" with an "election" as if they are one and the same. Voting, as explained in *League of Women Voters*, is the act of voting for a candidate or proposal. Under current law, qualified Michigan electors can vote up to 40 days before an election by absentee ballot. They can exercise this right by voting their ballots by mail or in-person. But, under the current law, a person's vote cannot be counted until the election.

RESPONSE: Denied that DYV improperly equated the terms "voting" with "election" for purposes of its Challenge to the Proposal. The balance of these allegations state a conclusion of law to which no response is required.

73. Moreover, contrary to DYV's suggestion, "Election Day" is not a defined term, whether by Constitution or statute. Rather, the Constitution prescribes when an "election" shall occur, which is set forth in Article 2, Section 5. "Election" is defined as "an election or primary election at which the electors of this state or of a subdivision of this state choose or nominate by ballot an individual for public office or decide a ballot question lawfully submitted to them." *See* MCL 168.2(g).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

74. So while the term "election day" is not in the Constitution, that term and "election" are used throughout the Michigan Election Law to denote the date of the election – meaning the date on which the votes are tabulated and the voters' choices determined.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

75. Indeed, no votes cast by absentee ballot are permitted to be counted until the day of the election. *See* MCL 168.765(3) ("Absent voter ballots may not be tabulated before the opening of the polls on election day.").

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

76. The Proposal merely allows qualified electors to vote in-person prior to an election, similar to voting by absent ballot prior to an election. No more and no less. The act of voting or casting one's vote, whether marking an absent ballot or a regular ballot is just that – the act of voting.

RESPONSE: Denied as untrue in the manner and form alleged.

77. As explained by the Supreme Court in *League of Women Voters*, that act is a process that involves numerous steps, including registering to vote, in the case of absent voting, applying for a ballot, and the act of casting one's vote by marking the ballot. All of those acts culminate in the tallying of those votes, which does not occur until Election Day. Indeed, the Proposal expressly provides: "No early voting results shall be generated or reported until after 8:00pm on Election Day."

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

78. There is no reasonable interpretation of the Proposal that allowing people to vote early in-person for 9 days before Election Day would "eviscerate" Article 2, Section 5. Indeed, as noted above, the Proposal itself references Election Day as the singular date upon which early voting results may be generated and tabulated. DYV's Challenge was and remains simply wrong.

RESPONSE: Denied as untrue.

79. Article 2, Section 5 will remain perfectly intact as written if the Proposal is adopted by the people this November. Election days will remain as prescribed by the Constitution. The Proposal will simply allow people to do in-person that which they can do now by absent ballot – cast their vote prior to an election. No ordinary and reasonable voter would read the Proposal as eviscerating and nullifying Election Day in Michigan nor is that provision of the Constitution in any way "rendered wholly inoperative" by the Proposal.

RESPONSE: Denied that the Proposal, if adopted, would leave Article 2, Section 5 of our Constitution "perfectly intact." Rather, it would eviscerate that provision, rendering the meaning of "Election Day" contemplated by our Constitution wholly inoperative. The balance of these allegations are denied as untrue in the manner and form alleged.

80. For these reasons, the Board should have rejected this Challenge and so too should the Court. This Court should direct the Board to certify the Petition.

RESPONSE: Denied as untrue.

The Proposal Would Not Abrogate the Legislature's Ability to Exclude Certain Persons from Voting under Article 2, Section 2.

81. DYV next argued that because the Proposal expressly provides for the fundamental right to vote, it somehow abrogates the Legislature's permissive powers under Article 2, Section 2 of the Constitution to "exclude persons from voting because of mental incompetence or commitment to a jail or penal institution." (*See* Ex. 3, DYV's Challenge at 13 (citing Const 1963, art 2, § 2).)

RESPONSE: Admitted that PTV22's Proposal abrogates the Legislature's powers under Article 2, Section 2 of our State Constitution.

82. For this to be true, the Proposal would have to render the Legislature's powers in this respect wholly inoperative such that they were a nullity, or essentially voided. This contention is not even plausibly correct.

RESPONSE: Denied as untrue in the manner and form alleged.

83. The Proposal provides in relevant part that "[e]very citizen of the United States who *is an elector qualified to vote in Michigan* shall have the following rights: (a) The fundamental right to vote…." (emphasis added). Under the Proposal, therefore, an elector still must be qualified to vote in Michigan to exercise that right.

RESPONSE: Admitted.

84. What is more, DYV's argument ignores that the Legislature may still pass laws governing the fundamental right to vote and elections provided that those laws do not have "the intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote." The Proposal simply does not eviscerate or render inoperative the Legislature's powers in this regard.

RESPONSE: Denied as untrue in the manner and form alleged.

85. Article 2, Section 1 provides that every "citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election *except as otherwise provided in this constitution*. The legislature shall define residence for voting purposes." *See* Const 1963, art 2, § 1 (emphasis added).

RESPONSE: Admitted.

86. Article 2, Section 2, the very next provision of the Constitution, permits the Legislature to "exclude persons from voting because of mental incompetence or commitment to jail or a penal institution." *See* Const 1963, art 2, § 2.

RESPONSE: Admitted.

87. Should the Legislature choose to exercise that option, such persons would not be qualified to vote in Michigan. Accordingly, they would not be entitled to the "fundamental right to vote." This is not a complicated analysis.

RESPONSE: Denied as untrue in the manner and form alleged. Article 2, Section 2 of our Constitution deals with the exclusion of persons from voting, and not with voter qualification. PTV22's attempt to conflate these two concepts is disingenuous and belies a simple truth: Article 2, Section 2 is plainly abrogated by PTV22's Proposal.

88. Stated differently, the Proposal does not prescribe who is or is not qualified to vote in Michigan and expressly limits its applicability to electors who are qualified to vote. Indeed, the Proposal does not address qualifications to vote whatsoever.

RESPONSE: Denied as untrue in the manner and form alleged. PTV22's Proposal plainly creates a fundamental right to vote for every qualified elector, including those people who are mentally incompetent or otherwise committed to a penal institution. As such, the Proposal, if adopted, would completely abrogate Article 2, Section 2 of our Constitution.

89. And in exercising the discretionary authority granted by Article 2, Section 2, the Legislature has chosen to exclude persons confined in jail or prison from voting, MCL 168.758b, or from registering to vote. MCL 168.492a. The Secretary of State explicitly recognizes these laws as rendering such individuals not qualified to vote. (*See* Ex. 6, State of Michigan Voter Registration Application). These laws would remain in effect if the Proposal is adopted by the people.

RESPONSE: Denied as untrue in the manner and form alleged.

90. Assuming the Proposal passes, an unqualified person will not have the fundamental right to vote, because that right can only be exercised by a "citizen of the United States who is an elector qualified to vote in Michigan[.]" Const 1963, art 2, § 4.

RESPONSE: Denied as untrue in the manner and form alleged.

91. Thus, Article 2, Section 2 is not "rendered wholly inoperative … a nullity[.]" *Protect Our Jobs*, 492 Mich at 483.

RESPONSE: Denied as untrue.

92. Instead, both Article 2, Section 2 and the new language proposed by the Proposal can easily be read harmoniously, and an existing constitutional provision is only abrogated:

> if it would be impossible for the amendment to be harmonized with the existing provision when the two provisions are considered together ... An existing provision is not rendered wholly inoperative if it can be reasonably construed in a manner consistent with the new provision, i.e., the two provisions are not incompatible. [*Id.*]

RESPONSE: Denied as untrue.

93. Given that Article 2, Section 2 is not even implicated, much less abrogated by the Proposal, PTV22 was certainly not required to republish that provision as abrogated. The Board should, therefore, have rejected this argument and so too should this Court.

RESPONSE: Denied as untrue. PTV22's Proposal, if adopted, would render Article 2, Section 2 of our Constitution "wholly inoperable." As such, PTV22 was obligated to republish that provision in its Petition. It didn't. So, the Board was justified in failing to certify the Proposal for the November ballot.

The Proposal Would Not Eviscerate the People's Power of Initiative and Referendum.

94. DYV's third challenge that the Proposal would abrogate the citizen-held right to initiative and referendum under Article 2, Section 9 fares no better.

RESPONSE: Denied as untrue in the manner and form alleged.

95. Again, it bears repeating that the standard that must be applied is that the Proposal would render Article 2, Section 9 wholly inoperative such that it essentially becomes a nullity, or legally void.

RESPONSE: This paragraph contains legal conclusions to which no response is required.

96. According to DYV, the Proposal "would block all manner of legislation, from whatever source, heretofore understood to be perfectly constitutional, including laws regarding felon voting, registration, and polling hours of operation." (*See* Ex. 3, DYV's Challenge at 16.)

RESPONSE: Admitted.

97. This argument is, again, legally and factually unsound and provided no basis for the Board to deny certification of the Proposal. DYV seems to believe the Legislature (or the people through the initiative) can currently pass any restriction on voting without limits, constitutional or otherwise.

RESPONSE: Denied that DYV's argument regarding the Proposal's effect on the power of initiative and referendum is legally or factually unsound. It's further denied that DYV's argument didn't provide any basis for the Board to deny certification of the Proposal. It did. The balance of these allegations are denied as untrue in the manner and form alleged.

98. DYV also conflated the independent initiative and referendum power held by the people in Article 2 and the legislative authority granted in Article 4. While related, they remain distinct. The Supreme Court has long recognized that direct democracy in Michigan under Article 2 is a series of powers that the people have reserved to themselves from the Legislature. "The initiative provision set forth in art. 2, § 9 ... serves as an express limitation on the authority of the Legislature." *League of Women Voters of Michigan v Secretary of State*, 508 Mich 520, 536; 975 NW2d 840 (2022) (quoting *Woodland v Mich Citizens Lobby*, 423 Mich 188, 214; 378 NW2d 337 (1985)).

RESPONSE: Denied that DYV has conflated the referendum power held by the people under Article 2 and the legislative authority granted in Article 4. The balance of these allegations state a conclusion of law to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities are hereby denied as untrue in the manner and form alleged.

99. Under DYV's theory, every constitutional amendment on any conceivable subject would be required to republish Article 2, Section 9. This would obviously be absurd.

RESPONSE: Denied as untrue.

100. Absolutely nothing in the Proposal prohibits or limits the authority of a citizen-led initiative as set forth in the Constitution. A citizen-led ballot initiative filed pursuant to Article 2, Section 9 that is inconsistent with the Constitution would be struck down by a court as unconstitutional now and would be struck down by a court as unconstitutional if the Proposal is adopted by the people in November.

RESPONSE: Denied as untrue. The Proposal does significant harm to the citizen-led initiative process set forth in Article 2, Section 9 of our Constitution. As such, it "alters or abrogates" that constitutional provision, and should've been republished in the Petition.

101. For example, a citizen-led statutory ballot initiative seeking to ban all absent voting would violate Article 2, Section 4 and would be held unconstitutional by a court. Likewise, if the Proposal is adopted in November, a citizen-led statutory ballot initiative seeking to ban all early voting in Michigan would be held unconstitutional by a court.

RESPONSE: This paragraph contains legal conclusions to which no response is required..

102. In short, DYV's claim that the Proposal eviscerates the people's power of initiative and referendum was and is plainly wrong and should have been disregarded in its entirety before the Board and should be as well here by this Court.

RESPONSE: Denied as untrue.

The Proposal Would Not Abrogate Article 7, Section 8 and DYV Has a Fundamental Misunderstanding of the Role Counties Play in Michigan Elections.

103. DYV also argued that the Proposal would abrogate Article 7, Section 8, which vests within county boards of supervisors (or, more commonly known today as county commissions) "legislative, administrative, and other such powers and duties as provided by law." (*See* Ex. 3, DYV's Challenge at 17.)

RESPONSE: Admitted.

104. DYV claimed the Proposal would strip county boards of commission of the ability to enact even the most innocuous of voting regulations and that therefore PTV22 was required to publish this provision as being somehow abrogated by the Proposal.

RESPONSE: Admitted.

105. Indeed, DYV states that a county commission would be prohibited from enacting anything that relates to "election administration."

RESPONSE: Denied as untrue in the manner and form alleged.

106. Not only did DYV's argument fail to even arguably meet the high burden of showing that this provision is rendered wholly inoperative, but it shows how desperate DYV was to create an issue where none clearly existed.

RESPONSE: Denied as untrue.

107. As a threshold matter, DYV apparently does not understand that county commissions ***play no role whatsoever in the administration of elections in Michigan*** – they do not pass laws or ordinances on the administration of elections; they do not pass laws or ordinances on the qualifications of electors or voter registrations; and, they do not pass laws or ordinances on polling hours of operation or early absentee voting. Indeed, this entire argument appears to be grounded on a fundamental misunderstanding of how elections are administered in Michigan.

RESPONSE: Denied that DYV's argument regarding the role of county commissions in election administration is without merit. The balance of these allegations are denied as untrue in the manner and form alleged.

108. The Michigan Election Law prescribes the powers and duties of election officials, including local officials, and provides that the Secretary of State "shall be the chief election officer of the state and shall have supervisory control over location election officials in the performance of their duties" under the provisions of the Michigan Election Law. *See* MCL 168.21.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

109. Among a host of other responsibilities under the Michigan Election Law, the Secretary of State advises and directs local election officials as to the proper methods of conducting elections; publishes various manuals and instructions; and, prescribes and requires uniform forms, notices, and supplies he or she considers advisable for use in the conduct of elections and registrations. *See generally* MCL 168.31.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities

cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

110. Additionally, housed in the office of the Secretary of State is the Bureau of Elections, which operates under the supervision of the Director of Elections, who is appointed by the Secretary of State. *See* MCL 168.32.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

111. The Bureau of Elections generally accepts and reviews petition filings; conducts statewide instructional programs on elections; assists local election officials with their administrative duties; oversees the operation of Michigan's Qualified Voter File system; publishes manuals and newsletters; and monitors legislation affecting the administration of elections.

RESPONSE: Admitted.

112. In addition, the Bureau of Elections administers the Michigan Campaign Finance Act and Lobby Registration Act.

RESPONSE: Admitted.

113. The Michigan Election Law also continues the previously constitutionally established Board of State Canvassers. *See* MCL 168.22(1).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

114. The Board is responsible for a host of duties, including canvassing the returns and determining the results for state and Federal elections in Michigan and for also determining the results of elections on a proposed amendment to the constitution or on any other ballot question.

RESPONSE: Admitted.

115. The Board is also responsible for recording the results of county canvasses done by County Board of Canvassers under MCL 168.826. *See* MCL 168.841.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

116. County clerks also play a role. They receive and canvass petitions for countywide and district offices that do not cross county lines and accept campaign finance disclosure reports from local candidates.

RESPONSE: Admitted.

117. In addition, county clerks are responsible for training precinct inspectors and assisting with administering Michigan Qualified Voter File System. County election commissions are responsible for furnishing specified election supplies (including ballots) for statewide August primaries, statewide November general elections and special primaries and elections held to fill vacancies in federal, state and county offices.

RESPONSE: Admitted.

118. Boards of County Canvassers are responsible for canvassing the votes cast within the county they serve. The Board members certify elections for local, countywide and district offices that are wholly contained within the county they serve. The Board members are also responsible for inspecting the county's ballot containers every four years.

RESPONSE: Admitted.

119. At the city and township level, those local clerks maintain the registration records for their respective jurisdictions and are responsible for administering all federal, state, county and local elections.

RESPONSE: Admitted.

120. And City and Township Election Commissions are responsible for establishing precincts, assessing voting equipment needs, providing election supplies (including ballots), appointing precinct inspectors and carrying out other election related duties for their respective jurisdictions.

RESPONSE: Admitted.

121. Finally, City and Township Boards of Canvassers, where they exist, canvass elections conducted in the local jurisdiction.

RESPONSE: Admitted.

122. This is it – this is the structure of Michigan's election's system. And a county commission plays no role in the process whatsoever.

RESPONSE: Denied as untrue in the manner and form alleged.

123. DYV does not provide any support for its argument to the contrary because it cannot do so.

RESPONSE: Denied as untrue.

124. All Article 7, Section 8 says is that "Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law." *See* Const 1963, art 7, § 8. That is the entire provision.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

125. And the Michigan Election Law does not give county commissions any powers or duties in the election administration process in Michigan whatsoever, so the Proposal could not possibly abrogate their powers and duties.

RESPONSE: Denied as untrue in the manner and form alleged.

126. Thus, given that the Proposal does not even implicate Article 7, Section 8, it could not possibly eviscerate or render it wholly inoperative. PTV22 was, therefore, not required to publish that provision in the Proposal.

RESPONSE: Denied as untrue.

127. The Board should have rejected that argument and this Court should so as well.

RESPONSE: Denied as untrue.

The Proposal Would Not Abrogate the Power of the Supreme Court to Establish and Revise the Michigan Court Rules of Practice and Procedure.

128. Finally, DYV argues that the Proposal would somehow abrogate Article 6, Section 5 of the Constitution, which states:

> The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited. [Const 1963 art 6, § 5.]

RESPONSE: Admitted.

129. DYV argued that the Proposal would abrogate Article 6, Section 5 by "eroding" the Supreme Court's "exclusive and total control" over practice and procedure." (*See* Ex. 3, DYV's Challenge at 20.) DYV also seems to think that this provision of the Constitution grants the Supreme Court the exclusive right to designate who has standing to bring a case or to establish venue. *Id.* This argument is woefully deficient.

RESPONSE: Admitted that DYV argued the Proposal would abrogate the power of the Michigan Supreme Court to establish and revise the rules of practice and procedure. Denied that DYV's argument in that regard is "woefully deficient." The balance of these allegations are denied as untrue in the manner and form alleged.

130. *First*, the Proposal does not in any way touch upon any practice or procedures of the Supreme Court, much less limit them. Indeed, this argument appears to be based on a fundamental misreading of the Proposal as well as a serious misunderstanding of what Article 6, Section 5 means.

RESPONSE: Denied as untrue.

131. The Proposal explicitly enshrines the fundamental right of qualified electors in Michigan to vote and provides that this right may not be substantively abridged. This is a substantive right that would not implicate much less infringe upon the Supreme Court's authority under Article 6, Section 5 to prepare court rules to govern practice and procedure before the state's courts. Indeed, as the Court of Appeals held in 2017, the Supreme Court is not authorized to enact court rules that establish, abrogate, or modify the substantive law; rather, the Supreme Court's constitutional rule-making authority extends only to matters of practice and procedure. *Kern v Kern-Koskela*, 320 Mich App 212, 222; 905 NW2d 453 (2017); *see also McDougall v Schanz*, 461 Mich 15, 28–31; 597 NW2d 148 (1999) (statute containing strict requirements concerning qualifications of experts in medical malpractice cases was an enactment of substantive law that did not impermissibly infringe Supreme Court's constitutional rule-making authority over practice and procedure).

RESPONSE: Admitted that the Proposal, if adopted, would create a fundamental right to vote and, in so doing, would "alter" or "abrogate" several existing provisions of our Constitution. The balance these allegations contain a legal conclusion to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities are denied as untrue in the manner and form alleged.

132. All litigation procedures and practices otherwise available to litigants (*e.g.*, injunctions, a writ for mandamus, a writ for quo warranto, a declaratory action, etc.) that the Supreme Court has made available through the promulgation of the Michigan Court Rules remain in effect and untouched by the Proposal, including with respect to litigation arising out of the Proposal itself. *In re "Sunshine Law,"* 1976 PA 267, 400 Mich 660, 663; 255 NW2d 635 (1977) ("The judicial powers derived from the Constitution include rule-making, supervisory and other administrative powers as well as traditional adjudicative ones."); *see also McDougall*, 461 Mich at 27 ("Rather, as is evident from the plain language of art. 6, § 5,

this Court's constitutional rule-making authority extends *only* to matters of practice and procedure.") (emphasis in original).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

133. *Second*, none of the other complained of provisions of the Proposal have anything to do with the "practice or procedure" of the Supreme Court. DYV complains that the Proposal creates a cause of action as if the Supreme Court is the only institution in Michigan that has the authority to create causes of action. Other constitutional provisions and statutes too numerous to list explicitly create causes of action. *See, e.g.*, MCL 324.73109 (creating cause of action under Natural Resources and Environmental Protection Act); MCL 440.4207(5) ("A cause of action for breach of warrant under this section accrues . . . ."); MCL 445.437(1) (creating cause of action for violation of Scrap Metal Regulatory Act).

RESPONSE: Denied that the provisions at issue don't have anything to do with the "practice or procedure" of the Michigan Supreme Court. The balance of these allegations state a conclusion of law to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with those authorities are hereby denied as untrue in the manner and form alleged.

134. Next, DYV complained that the Proposal confers standing upon all Michigan citizens to bring actions under the Proposal.

RESPONSE: Denied as untrue in the manner and form alleged.

135. So too do other provisions of the Constitution or Michigan statutes. *See, e.g.*, Const 1963, art IX, § 32 ("Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of . . . ."); Const 1963, art IV, § 6(6) (granting independent redistricting commission "legal standing to prosecute an action regarding the adequacy of resources provided for the operation of the commission . . . ."); MCL 331.1307(4); MCL 3.692.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

136. And the same holds true for DYV's complaints about the Proposal establishing venue in the circuit court in which a plaintiff resides. *See generally* MCL 600.1601, *et seq*. (establishing venue for a host of causes of actions and claims, including probate bonds, actions against government units, general contract claims, tort and product liability claims, among others).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

G. The August 31, 2020 Meeting of the Board.

137. On August 31, 2022, the Board met to consider certification of the Proposal, among other business. (Ex. 5, 8/31/22 Agenda.)

RESPONSE: Admitted.

138. PTV22, through counsel, appeared and urged the Board to reject DYV's Challenge and to, consistent with the Bureau of Elections' Staff Report, certify the Proposal for the Ballot.

RESPONSE: Admitted.

139. DYV, also through counsel, appeared and urged the Board to reject the Proposal consistent with the arguments it made in its Challenge.

RESPONSE: Admitted.

140. Ultimately, Member Bradshaw made a motion to certify the Proposal. The motion deadlocked along party lines.

RESPONSE: Admitted.

141. PTV22 filed this action less than 24 hours after the hearing.

RESPONSE: Admitted.

COUNT I – MANDAMUS

142. Plaintiff incorporates the allegations in the foregoing paragraphs as if fully stated herein.

RESPONSE: DYV hereby incorporates its responses to paragraphs 1-141, the same as if fully set forth herein.

143. When the Board refuses to certify a petition despite the petition having sufficient signatures, the proper remedy is a writ of mandamus ordering the Board to certify the petition. *Wojcinski v State Bd of Canvassers*, 347 Mich 573, 578; 81 NW2d 390 (1957).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

144. A party seeking mandamus must show four elements: "(1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result." *Attorney Gen v Bd Of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016) (cleaned up).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

145. PTV22, Defendants herein, and even DYV all agree that PTV22 submitted sufficient signatures and that its petition was approved as to form on February 11, 2022. PTV22 therefore has a clear legal right to have the Board certify the petition. *Attorney Gen v Bd of State Canvassers*, 318 Mich App 242, 249; 896 NW2d 485 (2016) (holding that persons before the Board have "a clear legal right to have the Board perform its statutory duties").

RESPONSE: Denied as untrue that PTV22's Petition was ever approved as to its "form." It's further denied as untrue that PTV22 had a clear legal right to have the Board certify its Petition. The balance of these allegations state a legal conclusion to which no response is required. By way of further response, DYV asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn in nonconformity with those authorities are denied as untrue in the manner and form alleged.

146. Board members are constitutionally bound by their oath of office to uphold and implement all Michigan laws and the Constitution, which necessarily includes Michigan's Election Law. Under that law, they have a statutory duty to canvass petitions and certify any petition that has enough valid signatures. *See, e.g.*, MCL 168.476. The Board has already canvassed PTV22's petition and does not disagree with the Bureau of Elections' staff that the petition has enough valid signatures. The Board thus has a clear legal duty to certify the petition.

RESPONSE: Admitted that the Board's members are constitutionally bound to uphold and implement Michigan law. Denied that those Board members are empowered to cast a blind eye to glaring deficiencies in the form of any particular petition, including the one PTV22 filed in support of its Proposal. The form of PTV22's Petition was, in fact, invalid because it didn't republish several provisions of our existing Constitution that would be "altered" or "abrogated" by the Proposal. It's also denied as untrue that the Board had a clear legal duty to certify the Petition. The balance of these allegations state a legal conclusion to which no response is required. DYV further asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

147. The Board failed to perform a ministerial act. "A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 58 n 11; 832 NW2d 728 (2013) (cleaned up). Certifying a petition is an act defined with precision and certainty; it is a mathematical calculation that leaves nothing to the Board's judgment. *Withey v Board of State Canvassers*, 194 Mich 564, 567; 161 NW 781, 782 (1917) (stating that once the Board had all the relevant numbers, "ma[king] the canvass and issu[ing] the certificates" was a "statutory ministerial duty").

RESPONSE: Denied as untrue that the act of certifying a Petition is purely "ministerial" in nature. The balance of these allegations contain legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with those authorities are denied as untrue in the manner and form alleged.

148. Now that the Board has, by vote, refused to certify the petition, PTV22's only remedy is a writ of mandamus.

RESPONSE: Admitted that the Board correctly refused to certify PTV22's Petition. The balance of these allegations are denied as untrue in the manner and form alleged.

COUNT II – VIOLATION OF DUE PROCESS AND EQUITABLE ESTOPPEL

149. Plaintiff incorporates the allegations in the foregoing paragraphs as if fully stated herein.

RESPONSE: DYV hereby incorporates its responses to paragraphs 1-148, the same as if fully set forth herein.

150. 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, Am XIV.]

RESPONSE: Admitted.

151. The Due Process Clause of the Michigan Constitution says: "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." Const 1963, art 1, § 17.

RESPONSE: Admitted.

152. Both of these due process clauses require that the government provide citizens with notice and an opportunity to be heard before it deprives those citizens of life, liberty, and property.

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn

inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

153. The right to vote is protected in more than the initial allocation of the franchise because equal protection applies to the manner of its exercise as well. *See Bush v Gore*, 531 US 98, 110; 121 S Ct 525; 148 L Ed 2d 388 (2000).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

154. Thus, after granting the right to vote on equal terms, a government may not, by later arbitrary and disparate treatment, value one person's vote over that of another. *See, e.g., Harper v Virginia Bd of Elections*, 383 US 663, 665; 86 S Ct 1079; 16 L Ed 2d 169 (1966).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

155. Further, "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v Sims*, 377 US 533, 555; 84 S Ct 1362; 12 L Ed 2d 506 (1964).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

156. Once a state creates a process by which to amend the constitution, the state cannot place restrictions on its use that violate the federal or state constitutions.

RESPONSE: Denied as untrue that the Board, in refusing to certify PTV22's Proposal, violated the Federal or State Constitutions. The balance of these allegations state a conclusion of law to which no response is required.

157. In other words, the federal and state constitution prohibit the Board from treating an adequate number of petition signatures submitted on a proper form in an arbitrary and disparate manner.

RESPONSE: Denied as untrue that the Board, in refusing to certify PTV22's Proposal, acted in an arbitrary and disparate manner. The balance of these allegations state a conclusion of law to which no response is required.

158. By refusing to certify the Proposal despite the Board approving the Proposal's petition as to form and Bureau of Elections Staff determining the Proposal had adequate signatures, the Board has violated PTV22's due process rights.

RESPONSE: Denied as untrue that the Board ever approved the "form" of PTV22's Petition. It is further denied that the Board, in refusing to certify PTV22's Proposal, violated that entity's due process rights. The balance of this paragraph contains conclusions of law which no response is required.

159. As noted, the Board approved the form of the petition of PTV22's Proposal on February 11, 2022. No one challenged the form of PTV22's petition at that time on the basis that it failed to list all constitutional provisions that a third-party believed were altered-or-abrogated.

RESPONSE: Denied as untrue that the Board "approved" the form of PTV22's Petition on February 11, 2022. The balance of these allegations are denied as untrue in the manner and form alleged.

160. PTV22 has already completed its petition drive under the Board's approved petition form.

RESPONSE: Denied as untrue that the Board ever "approved" the form of PTV22's Petition.

161. Measuring the Proposal against any other standard would violate PTV22's due process rights.

RESPONSE: Denied as untrue that PTV22's due process rights were violated. The balance of this paragraph contains conclusions of law to which no response is required.

162. For example, just last year, the Michigan Supreme Court rejected a challenge that was based, in part, on arguments that Unlock Michigan's petition form failed to comply with the Michigan Election Law in a host of ways, including that the form of Unlock Michigan's petition violated the Constitution's republication requirement. (Ex. 7, Brief of Keep Michigan Safe.)

RESPONSE: Denied as untrue in the manner and form alleged.

163. This Court rejected the challenger's form arguments because, just like PTV22 here, Unlock Michigan had received preliminary approval as to form approximately a year before it sought certification. *Id.* at 1015 ("In the present case, the Board approved the form and content of the petition in July 2020 . . . . The Bureau of Elections estimated that Unlock Michigan submitted at least 460,000 valid signatures when it only needed about 340,000 . . . . Therefore, the Board has a clear legal duty to certify the petition.")

RESPONSE: Denied as untrue in the manner and form alleged.

164. The Board should thus be equitably estopped from considering a challenge to the petition form of the Proposal, which is precisely what DYV's Challenge is, on the basis of this Court's recent precedents.

RESPONSE: Admitted that DYV's Challenge is based on the form of PTV22's Petition. The balance of these allegations are denied as untrue.

165. The Michigan Supreme Court has long held that the doctrine of equitable estoppel applies not only to individuals, but also to the state of Michigan and its officers and agencies. *Oliphant v State*, 381 Mich 630, 638; 167 NW2d 280 (1969) ("That the State as well as individuals may be estopped by its acts, conduct, silence and acquiescence is established by a line of well adjudicated cases."); *see also Wiersma v Michigan Bell Tel Co*, 156 Mich App 176, 185; 401 NW2d 265, 269 (1986) (same and citing *Oliphant* with approval).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

166. A governmental entity can be estopped when: (1) by representation, admissions, or silence, intentionally or negligently, the governmental entity induces another party to believe facts; (2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts . . . ." *Howard Twp Bd of Trustees v Waldo*, 168 Mich App 565, 575; 425 NW2d 180 (1988).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

167. PTV22 satisfies all of these factors.

RESPONSE: Denied as untrue.

168. On February 11, 2022, the Board approved the petition form of the Proposal, which had also been reviewed and approved by the Bureau of Elections. There was no alter-or-abrogate challenge asserted at that time even though there were opponents in attendance and they had every opportunity to do so and did in fact challenge other portions of the form. Indeed, opponents could have filed a lawsuit over the Board's approval of the form any time afterwards and *before* PTV22 completed its petition drive but they never did so or took any other action.

RESPONSE: Denied as untrue that the Board "approved" the form of PTV22's Petition on February 11, 2022. The balance of these allegations are denied as untrue in the manner and form alleged.

169. Given the Board's February 11, 2022 approval as to form of the Proposal's petition, PTV22 believed that its petition form complied with all aspects of the Michigan Election Law.

RESPONSE: Denied as untrue that the Board "approved" the form of PTV22's Petition on February 11, 2022. With respect to the balance of these allegations, including what PTV22 "believed" in relation to its Petition form, DYV lacks knowledge or information sufficient to form a belief as to the truth of the same; therefore, PTV22 is left to its proofs.

170. PTV22 justifiably relied on the Board's approval of the petition form in conducting its petition drive.

RESPONSE: Denied as untrue in the manner and form alleged.

171. PTV22 will be immediately and irreparably harmed if the Board is now permitted to claim that the Proposal's petition form is defective and that PTV22's Proposal cannot appear on the November 2022 General Election Ballot. PTV22 has expended significant resources gathering in excess of 640,000 signatures.

RESPONSE: Denied as untrue.

COUNT III – DECLARATORY JUDGMENT

172. Plaintiff incorporates the allegations in the foregoing paragraphs as if fully stated herein.

RESPONSE: DYV hereby incorporates its responses to paragraphs 1-171, the same as if fully set forth herein.

173. An *ultra vires* act is "defined as an activity not expressly or impliedly mandated or authorized by law." *Richardson v Jackson Co*, 432 Mich 377, 381; 443 NW2d 105 (1989) (emphasis removed).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

174. As discussed above, the Board is not permitted to consider an alter-or-abrogate challenge. *Citizens Protecting Michigan's Const*, 324 Mich App at 585 ("because the determinations of whether a proposal is a general revision or an amendment to the Constitution and whether a proposal serves more than a single purpose require judgment, they are not ministerial tasks to be performed by the Secretary or the Board."); *see also Michigan Civil Rights Initiative*, 268 Mich App at 519 ("it is clear to us that the Legislature has only conferred upon the Board the authority to canvass the petition 'to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.'") (quoting MCL 168.476(1).

RESPONSE: Denied that the Board isn't permitted to consider form challenges to a petition, including those that allege a proposal, if adopted, would "alter" or "abrogate" an existing provision of the Constitution. The balance of this paragraph cites legal authorities that speak for themselves, and any conclusions drawn inconsistently with those authorities are hereby denied as untrue in the manner and form alleged.

MOTION FOR ORDER TO SHOW CAUSE AND FOR IMMEDIATE CONSIDERATION

175. MCR 3.305(C) says: "On ex parte motion and a showing of the necessity for immediate action, the court may issue an order to show cause."

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited in preceding paragraphs speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

176. Importantly, this "motion may be made in the complaint." *Id.*

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

177. The Court should immediately adjudicate the merits of this case on an expedited basis because it involves the constitutional rights of voters, petition circulators, and PTV22.

RESPONSE: Admitted that this dispute involves the legality of PTV22's Petition form and, by implication, election-related matters. The balance of these allegations are denied as untrue in the manner and form alleged.

178. Further, any delay would deprive PTV22 of the opportunity to have its Proposal appear on the November 2022 General Election Ballot. Ballots must be finalized at least 60 days prior to the election. *See* MCL 168.32; MCL 168.474a; MCL 168.480. The printing and mailing of absentee ballots must be accomplished by September 24, 2022. County clerks must also deliver absent voter ballots for the November General Election to local clerks by September 24, 2022, *see* MCL 168.714, in time for local clerks to issue absent voter ballots to military and overseas voters in compliance with state and federal law and to issue absent voter ballots to all other registered voters by mail and in person beginning the 40th day before the November General Election. *See* Const art 2, § 4. Significant work on ballot proofing and preparation must take place before that.

RESPONSE: Denied that PTV22's Petition form was sufficient, or that PTV22's Proposal should appear on the November 2022 ballot.

179. PTV22 also wishes to educate voters about the Proposal's merits, but it cannot do so until it knows whether the Proposal will appear on the ballot.

RESPONSE: DYV neither admits nor denies the allegations contained in this paragraph because it lacks knowledge or information sufficient to form a belief as to the truth of the same; therefore, PTV22 is left to its proofs.

180. The Michigan Supreme Court has repeatedly said that election-related cases must be considered on an expedited basis. *See, e.g., Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011).

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

181. The Board is scheduled to meet September 9, 2022 and its next meeting is not until September 22, 2022, which would be too late for ballot printing.

RESPONSE: Admitted.

182. And MCL 168.479(2), under which this mandamus action is being brought, says that "[a]ny legal challenge to the official declaration of the sufficiency or insufficiency of an initiative petition has the highest priority and shall be advanced on the supreme court docket so as to provide for the earliest possible disposition."

RESPONSE: This paragraph contains legal conclusions to which no response is required. By way of further response, DYV affirmatively asserts that the legal authorities cited herein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

183. Therefore, pursuant to MCR 3.305(C), PTV22 respectfully requests that this Court order Defendants to show cause why a writ of mandamus should not issue and to order that responding briefs be filed within the time frame necessary such that the Court can issue a decision by September 8, 2022.

RESPONSE: Denied that PTV22 is entitled to a writ of mandamus, or any of the other relief being sought herein.

WHEREFORE, DYV respectfully requests that this Honorable Court enter an order: (a) denying PTV22's Motion for an Order to Show Cause and Immediate Consideration; (b) denying PTV22's request for a writ of mandamus that directs the Defendants' to certify the Proposal for placement on the November

2022 General Election Ballot; (c) denying remand to the Board, or otherwise declaring taht the form of PTV22's Petition is sufficient; (d) denying remand to the Secretary of State and Director of Elections so they can certify PTV22's Proposal and place it on the November 2022 General Election Ballot; (e) denying PTV22's request for an order that the Board is equitably estopped from considering an "alter" or "abrogate" challenge to the Petition's form; and (f) granting any other relief deemed to be equitable and just.

Respectfully submitted,

DATED: September 6, 2022

/s/ D. Adam Tountas
Jonathan B. Koch (P80408)
D. Adam Tountas (P68579)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Defend Your Vote
100 Monroe Center NW
Grand Rapids, MI 49503
616-774-8000
jkoch@shrr.com
dtountas@shrr.com

/s/ Eric E. Doster
Eric E. Doster (P41782)
DOSTER LAW OFFICES, PLLC
Attorneys for Defend Your Vote
2145 Commons Parkway
Okemos, MI 48864
(517) 977-0147
eric@ericdoster.com

PROPOSED INTERVENING PARTY DEFEND YOUR VOTE'S AFFIRMATIVE DEFENSES

NOW COMES Proposed Intervenor, Defend Your Vote ("DYV"), by and through its counsel, Smith Haughey Rice & Roegge, P.C. and Doster Law Offices PLLC, and for its proposed Affirmative Defenses to the Plaintiff's Complaint for Immediate Mandamus Relief and Declaratory Judgment and Motion for Order to Show Cause and Immediate Consideration, hereby states as follows:

1. Any allegations not specifically admitted, denied, controverted, or referred to in DYV's Answer to the Plaintiff's Complaint for Immediate Mandamus Relief and Declaratory Judgment and Motion for Order to Show Cause and Immediate Consideration are hereby denied as untrue.

2. The Plaintiff has failed to state a valid claim upon which relief can be granted.

3. The form of the Plaintiff's Petition fails to satisfy Article 12, Section 2 of our Constitution and MCL 168.482(3).

4. The Plaintiff's Proposal, if adopted, would abrogate several provisions of our existing Constitution that were not republished in its Petition.

5. PTV22 had no clear legal right to the certification of its Proposal for the November ballot.

6. The Board had no legal duty to certify PTV22's Proposal for the November ballot.

7. The extraordinary writ of mandamus is inapplicable under the circumstances.

8. PTV22's due process rights were not violated in any way.

9. Equitable estoppel does not apply under the circumstances.

10. PTV22 is not entitled to the declaratory relief requested.

WHEREFORE, DYV respectfully requests that this Honorable Court enter an order: (a) denying PTV22's Motion for an Order to Show Cause and Immediate Consideration; (b) denying PTV22's request for a writ of mandamus that directs the Defendants' to certify the Proposal for placement on the November 2022 General Election Ballot; (c) denying remand to the Board, or otherwise declaring that the form of PTV22's Petition is sufficient; (d) denying remand to the Secretary of State and Director of Elections so

they can certify PTV22's Proposal and place it on the November 2022 General Election Ballot; (e) denying PTV22's request for an order that the Board is equitably estopped from considering an "alter" or "abrogate" challenge to the Petition's form; and (f) granting any other relief deemed to be equitable and just.

Respectfully submitted,

DATED: September 6, 2022

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dtountas@shrr.com

/s/ Eric E. Doster
Eric E. Doster (P41782)
DOSTER LAW OFFICES, PLLC
Attorneys for Defend Your Vote
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(517) 977-0147
eric@ericdoster.com

PROPOSED INTERVENING PARTY DEFEND YOUR VOTE'S RESERVATION OF RIGHTS

DYV hereby reserves the right to amend its Answer and Affirmative Defenses as necessary.

Respectfully submitted,

DATED: September 6, 2022

/s/ D. Adam Tountas
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D. Adam Tountas (P68579)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Defend Your Vote
100 Monroe Center NW
Grand Rapids, MI 49503
616-774-8000
jkoch@shrr.com
dtountas@shrr.com

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Eric E. Doster (P41782)
DOSTER LAW OFFICES, PLLC
Attorneys for Defend Your Vote
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