

STATE OF MICHIGAN
IN THE SUPREME COURT

PROTECT THE VOTE 2022,

Plaintiff,

Supreme Court Case No. 164755

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,

**This case involves a claim that state
governmental action is invalid**

Defendants.

and

DEFEND YOUR VOTE

Proposed Intervenor-Defendant

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**PROPOSED INTERVENOR-DEFENDANT DEFEND YOUR VOTE'S BRIEF IN SUPPORT OF
MOTION TO INTERVENE PURSUANT TO MCR 2.209 AND MCR 7.311**

INTRODUCTION

Promote the Vote 2022 (PTV) is the sponsor of a petition to amend our Constitution to fundamentally change how Michigan conducts elections. After PTV filed signatures in support of its petition in July 2022, Defend Your Vote (DYV) filed a form challenge alleging that PTV's petition fails to republish several provisions of the current Constitution that would be abrogated if the petition is adopted, as required by both the Constitution and MCL 168.482.

In its staff report, the Bureau of Elections refused to take a position on the merits of DYV's challenge. Regardless, after hearing extensive public comment and oral argument from DYV, the Board of Canvassers deadlocked on the issue whether to certify PTV's petition. In response, PTV filed this mandamus lawsuit against the Board of Canvassers, the Secretary of State, and the Director of the Bureau of Elections asking this Court to compel the Board of Canvassers to certify its petition to amend the Michigan Constitution to appear on the November ballot. Now, just two business days after PTV filed its complaint, DYV moves to intervene.

As the only entity who filed a timely challenge to PTV's petition and presented oral argument through counsel at the Board of Canvassers' meeting where it considered PTV's petition, DYV has a unique interest in the outcome of this case that may be impaired or impeded pending the disposition of the case. And, because all the current defendants have refused to take a position on whether PTV's petition failed to republish constitutional provisions that it would abrogate—the key issue at the heart of this case—the existing parties will not adequately represent DYV's interests.

It follows that DYV has a right to intervene under MCR 2.209(A)(3). And even if it does not, this Court should permit DYV to intervene under MCR 2.209(B)(2) because its challenge (and its defense of this action) have a question of law or fact in common with PTV's complaint, and intervention would not delay or prejudice the adjudication of PTV's rights.

Therefore, this Court should grant DYV’s motion to intervene and allow it to fully participate as a defendant in this action.

BACKGROUND

In July 2022, Protect the Vote (“PTV”) filed its Petition with the Bureau of Elections for placement on the November 2022 ballot.¹ In August 2022, Defend Your Vote (“DYV”) challenged the form of the Petition on the basis that it failed to identify and republish several constitutional provisions that would be abrogated by the proposed amendments contained in the Petition.²

Among other things, DYV argued that Article 2, § 2 of Michigan’s Constitution permits—but does not require—the Legislature to exclude from voting two groups of persons: (1) the mentally incompetent and (2) the incarcerated.³ But the Petition would amend the Constitution to allow every qualified elector in Michigan the right to vote and not have such right interfered with by law, rule, regulation, qualification, prerequisite, standard, practice, or procedure.⁴ Accordingly, the Petition sought to abrogate the Legislature’s authority to exclude mentally incompetent or incarcerated persons from voting because their fundamental right to vote could not be denied, abridged, interfered with, or unreasonably burdened.⁵ DYV also argued that PTV’s petition would abrogate Article 2, § 5, Article 2, § 9, Article 6, § 5, and Article 7, § 8.

¹ Complaint, p. 4.

² Complaint, p. 4.

³ Exhibit 4 to PTV’s Complaint, Challenges to the Form of Petition Filed by Promote the Vote to Amend Michigan’s Constitution, p. 13.

⁴ Petition, p. 1.

⁵ Exhibit 4 to PTV’s Complaint, Challenges to the Form of Petition Filed by Promote the Vote to Amend Michigan’s Constitution, p. 13. Essentially, mentally incompetent and incarcerated persons are *qualified* to vote if they are United States Citizens who meet the minimum age requirement, have resided in Michigan for six months, and meet the requirements of local residency. Const. 1963, art. 2, § 1. Article 2, § 2, however, allows the Legislature to exclude those persons from voting. The Petition, in turn, seeks to allow all *qualified* voters the fundamental right to vote without any law, rule, regulation, qualification, prerequisite, standard, practice, or procedure interfering with that right. That’s precisely what Article 2, § 2 does.

PTV responded, asserting that nothing in the Petition abrogated any of the Constitutional provisions identified in DYV's challenge and that, because PTV had identified other constitutional provisions that it contends would be altered or abrogated, there was no reason for the Board not to certify the Petition for placement on the ballot.⁶ PTV argued that the Petition merely allows qualified voters to vote and has no bearing on the Legislature's authority to exclude mentally incompetent or incarcerated persons.⁷ This is because, according to PTV, the exclusion found under Article 2, § 2 makes mentally incompetent and incarcerated persons unqualified to vote.⁸ PTV further alleged there is nothing in the Petition that prescribes who is or is not qualified to vote in Michigan; it simply limits its applicability to electors who are qualified to vote.⁹ That is simply untrue.

The Bureau of Elections then issued a staff report, making "no recommendation as to the merits of the legal arguments raised" by DYV and PTV.¹⁰

On August 31, 2022, the Board of State Canvassers (the "Board") convened for public comment and to consider certification of the Petition, amongst other business.¹¹ After hours of public comment and arguments by the parties, the Board ultimately deadlocked on its decision whether to certify the Petition.¹² The next day, PTV filed its Complaint for mandamus asking this Court to direct the Board to certify the Petition for inclusion on the November ballot. This intervention motion follows shortly after.

⁶ Exhibit 4 to PTV's Complaint.

⁷ Exhibit 4 to PTV's Complaint, Promote the Vote 2022's Response to Defend Your Vote's Challenge, pp. 10-11.

⁸ Exhibit 4 to PTV's Complaint, Promote the Vote 2022's Response to Defend Your Vote's Challenge, pp. 10-11.

⁹ Exhibit 4 to PTV's Complaint, Promote the Vote 2022's Response to Defend Your Vote's Challenge, pp. 11.

¹⁰ Exhibit 1 to PTV's Complaint, Staff Report, p. 5.

¹¹ Exhibit 5 to PTV's Complaint.

¹² PTV's Complaint, p. 5.

ARGUMENT

DYV seeks to intervene in this case—either as of right or on a permissive basis—to raise the arguments it previously made in its challenge to PTV’s Petition, as well as those arguments raised at the August 31, 2022 meeting of the Board of State Canvassers. DYV has submitted this Motion to Intervene as timely as possible, and it has a unique interest in advancing a challenge upon which the Board, and Defendants as a whole, have stated they are taking no position. DYV’s assertion that the Petition failed to meet the constitutional prerequisites for inclusion on the November 2022 ballot arises out of the same factual issues as PTV’s Complaint. Therefore, this Court should grant DYV’s Motion to Intervene.

I. DYV Is Entitled to Intervene as of Right.

MCR 2.209(A)(3) provides that a proposed intervenor has the right to intervene (1) when the application to intervene is timely, (2) the party has an interest in the matter that may be impaired or impeded pending the disposition of the case, and (3) the existing parties will not adequately represent the nonparty’s interests. “The rule for intervention should be liberally construed to allow intervention where the applicant’s interests may be inadequately represented.”¹³ A party seeking intervention is not required to definitively prove that its interests are inadequately represented. Instead, “the concern of inadequate representation of interests need only exist.”¹⁴ “[T]here need be no positive showing that the existing representation is in fact inadequate. All that is required is that the representation by existing parties *may be inadequate*.”¹⁵ The possibly-inadequate-representation rule “is satisfied if the applicant shows that

¹³ *Hill v LF Transp, Inc*, 277 Mich App 500; 746 NW2d 118 (2008).

¹⁴ *Vestevich v West Bloomfield Tp*, 245 Mich App 759, 761-762; 630 NW2d 646 (2001).

¹⁵ *Mullinix v City of Pontiac*, 16 Mich App 110, 115; 167 NW2d 856 (1969) (emphasis added); *Karrip v Cannon Twp*, 115 Mich App 726, 731-732; 321 NW2d 690 (1982) (citations omitted) (“The proposed intervenors satisfied the second requirement by establishing that their representation is or *may be inadequate*.”)

representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.”¹⁶

DYV has met the first requirement for intervention of right. Although the Michigan Court Rules do not provide rigid guidelines for determining when an application for intervention is “timely,” this Court has noted that “[a]n intervener must be diligent, and any unreasonable delay after knowledge of the suit will justify the court in refusing to allow him to intervene where no satisfactory excuse is shown for the delay[.]”¹⁷ Here, DYV has acted diligently and has not delayed in filing this Motion to Intervene. PTV filed its Complaint for mandamus on September 1, 2022. DYV filed the instant motion less than a week later on the second business day after PTV filed its complaint.

DYV also meets the second requirement for intervention by right because it has “an interest” in the case that may be impaired by the disposition of PTV’s complaint. Michigan courts recognize the special nature of election cases and the standing of challengers to enforce the law in them.¹⁸ Here, aside from the general interest DYV has in ensuring that Michigan’s election laws (including MCL 168.482(3)) are enforced, DYV has a particular and unique interest in whether PTV’s petition appears on the November ballot and, thus, the outcome of this case. Opposing PTV’s ballot initiative to amend the Constitution is the entire reason that DYV was brought into existence. And it filed the only timely challenge to PTV’s petition and was the only entity who presented oral argument regarding whether to

¹⁶ *D’Agostini v City of Roseville*, 396 Mich 185, 188-189; 240 NW2d 252 (1976), quoting *Trbovich v. United Mine Workers of Am*, 404 US 528, 538 n 10; 92 S Ct 603; 30 L Ed 2d 686 (1972).

¹⁷ *School Dist of City of Ferndale v Royal Oak Twp School Dist No 8*, 293 Mich 1, 10; 291 NW 199 (1940).

¹⁸ See, e.g., *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 505-506; 688 NW2d 847 (2004) (“Election cases are special, however, because without the process of elections, citizens lack their ordinary recourse. For this reason we have found that ordinary citizens have standing to enforce the law in election cases.”); *Citizens Protecting Michigan’s Constitution v Secretary of State*, 324 Mich App 561, 582; 922 NW2d 404 (2018) (“Any person or organization opposing the submission of an initiative petition may bring an action for mandamus to preclude the placement of that petition onto the ballot.”); *Citizens Protecting Michigan’s Constitution v Secretary of State*, 280 Mich App 273, 282; 280 Mich App 801 (2008) (permitting a ballot question committee to challenge a petition).

certify the petition at the August 31, 2022 meeting of the Board of State Canvassers. So, for multiple reasons, as a challenger to the Petition and an entity dedicated to defeating PTV's petition, DYV has a specific interest in the outcome of this lawsuit that will not be protected unless it can intervene.

Finally, DYV meets the "minimal" burden of showing that the existing parties may not adequately represent their interests.¹⁹ Before the Board of Canvassers, DYV challenged whether the Petition satisfied the constitutional prerequisites for being placed on the ballot in both a written submission and by presenting oral argument at the August 31, 2022 meeting. In its staff report, the Bureau of Elections refused to take a stance one way or the other on DYV's challenge, claiming that because "[t]his challenge raises legal arguments...staff makes no recommendation as to the merits of the legal arguments raised."²⁰ And the Board deadlocked 2-2. So, in this lawsuit, the Defendants will similarly likely refuse to take a position on whether the Petition complied with the alter-or-abrogate republication requirement. DYV's goal is to ensure the initiative is defeated, whereas Defendants are presumably agnostic on whether it succeeds or fails. In other words, unlike DYV, Defendants are not invested in the success or failure of PTV's petition; rather, they merely seek timely resolution of the dispute so they may continue preparations such as ballot printing for the upcoming election. For that reason alone, DYV has made far more than the minimal required showing that the existing parties may not adequately represent its interests. Indeed, unless DYV is allowed to intervene, DYV will lose the opportunity to advance its position and none of the other parties in this case will advance the same position (let alone adequately).

Finally, the Defendants have indicated that they will not oppose this Motion to Intervene. If DYV is not allowed to intervene, there will be no adequate representation of DYV's interest and no true adversity between the parties on the key issue that lies at the heart of this case—whether the Petition

¹⁹ *D'Agostini*, 396 Mich at 188-189.

²⁰ Exhibit 1 to PTV's Complaint, PTV Staff Report, p. 5.

violated constitutional and statutory requirements of identifying and republishing provisions that would be altered or abrogated if PTV's proposal is adopted.

DYV, therefore, has a right to intervene that should be granted by this Court.

II. Alternatively, this Court Should Allow DYV to Intervene on a Permissive Basis.

Even if this Court were to find that DYV is not entitled to intervention of right, this Court should still allow intervention on a permissive basis. Under MCR 2.909(B), "the trial court may grant permissive intervention if timely application is made, if the applicant's claim or defense and the main action have a common question of law or fact, and if no prejudice or delay to the original parties will result."²¹ DYV has met each requirement.

First, as already discussed, this Motion to Intervene is timely because DYV filed it within days of PTV's Complaint for mandamus.

Second, DYV's challenge shares a "common question of law" with the main action. Specifically, DYV challenges the Petition on grounds that it did not comply with the constitutional prerequisites to identify and republish provisions of the Constitution that would be altered or abrogated by the Petition's approval. This is the mirror-image of the issues PTV raises in its Complaint for mandamus to compel the Board to certify the Petition on the grounds that it does not alter and abrogate provisions of the Constitution that were not identified.

Finally, DYV's participation will not cause prejudice or delay to the original parties. The Board has not even responded to PTV's Complaint, and DYV was the only party who filed a timely challenge the Petition in the first place and presented oral argument at the August 31, 2022 Board of Canvassers' meeting. And, despite the abbreviated timeline and quick deadline, allowing DYV to intervene will not delay the disposition of this suit or interfere with the deadline for timely beginning the ballot proofing and printing process that has been articulated by the Bureau of Elections. Indeed, because this Court has not

²¹ *Dean v Dep't of Corrections*, 208 Mich App 144, 150; 527 NW3d 529 (1994), citing MCR 2.909(B).

yet issued a briefing schedule or granted PTV's motion to show cause, DYV's intervention will not slow down this litigation one bit.

Thus, even if DYV doesn't have a right to intervene (it does), permissive intervention is proper and this Court should grant DYV's motion.

III. If Intervention is Denied, DYV Requests that this Court Consider its Response to PTV's Complaint as an Amicus Brief.

In the event this Court declines to allow DYV to intervene as a party Defendant, DYV submits its response to PTV's Complaint and requests that this Court consider that response as an amicus brief.

CONCLUSION

For the reasons stated, DYV respectfully requests that this Honorable Court grant its Motion to Intervene and allow DYV to intervene as a party Defendant to participate fully in this case.

Respectfully submitted,

Date: September 6, 2022

By: /s/ Jonathan B. Koch

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EXHIBIT 1

The circulator of this petition is a (mark one): paid signature gatherer volunteer signature gatherer.

If the petition circulator does not comply with all of the requirements of the Michigan election law for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted.

INITIATIVE PETITION AMENDMENT TO THE CONSTITUTION

Constitutional amendment to: recognize fundamental right to vote without harassing conduct; require military or overseas ballots be counted if postmarked by election day; provide voter right to verify identity with photo ID or signed statement; provide voter right to single application to vote absentee in all elections; require state-funded postage for absentee applications and ballots; require state-funded absentee-ballot drop boxes; provide that only election officials may conduct post-election audits; require 9 days of early in-person voting; allow donations to fund elections, which must be disclosed; require canvass boards to certify election results based only on the official records of votes cast.

For the full text of the proposed constitutional amendment and provisions of the existing constitution which would be altered or abrogated if adopted, see the reverse side of this petition. Provisions of existing constitution altered or abrogated by the proposal if adopted: Art. 2, §§ 4, 6 and 7; Art. 4, §§ 1 and 16; Art. 5, §§ 1 and 13; Art. 6, §§ 1, 2, 8, 23 and 26; Art. 7, §§ 3, 10, 18, 22 and 28; Art. 8, §§ 3 and 5; Art. 9 § 6.

We, the undersigned qualified and registered electors, residents in the county of _____, state of Michigan, respectively petition for amendment to constitution.

WARNING - A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

| SIGNATURE | PRINTED NAME | STREET ADDRESS OR RURAL ROUTE | CITY OR TOWNSHIP | ZIP CODE | DATE OF SIGNING | | |
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 ELECTIONS/GREAT SEAL

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township indicated preceding the signature, and the elector was qualified to sign the petition.

If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

WARNING—A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.

CIRCULATOR - Do not sign or date certificate until after circulating petition.

_____/_____/_____
 (Signature of Circulator) (Date)

 (Printed Name of Circulator)

 (Complete Residence Address (Street and Number or Rural Route)) Do not enter a post office box

 (City or Township, State, Zip Code)

 (County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan)



INITIATIVE PETITION AMENDMENT TO THE CONSTITUTION

Constitutional amendment to: recognize fundamental right to vote without harassing conduct; require military or overseas ballots be counted if postmarked by election day; provide voter right to verify identity with photo ID or signed statement; provide voter right to single application to vote absentee in all elections; require state-funded postage for absentee applications and ballots; require state-funded absentee-ballot drop boxes; provide that only election officials may conduct post-election audits; require 9 days of early in-person voting; allow donations to fund elections, which must be disclosed; require canvass boards to certify election results based only on the official records of votes cast.

The full text of the proposal amending Article 2, Sections 4 and 7 is as follows (additions capitalized, deletions stricken):

ARTICLE 2 ELECTIONS

Sec. 4. Place and manner of elections. (1) Every 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, INCLUDING BUT NOT LIMITED TO THE right, once registered, to vote a secret ballot in all elections. NO PERSON SHALL: (1) ENACT OR USE ANY LAW, RULE, REGULATION, QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE; (2) ENGAGE IN ANY HARASSING, THREATENING, OR INTIMIDATING CONDUCT; OR (3) USE ANY MEANS WHATSOEVER, ANY OF WHICH HAS THE INTENT OR EFFECT OF DENYING, ABRIDGING, INTERFERING WITH, OR UNREASONABLY BURDENING THE FUNDAMENTAL RIGHT TO VOTE.

ANY MICHIGAN CITIZEN OR CITIZENS SHALL HAVE STANDING TO BRING AN ACTION FOR DECLARATORY, INJUNCTIVE, AND/OR MONETARY RELIEF TO ENFORCE THE RIGHTS CREATED BY THIS PART (A) OF SUBSECTION (4)(1) ON BEHALF OF THEMSELVES. THOSE ACTIONS SHALL BE BROUGHT IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH A PLAINTIFF RESIDES. IF A PLAINTIFF PREVAILS IN WHOLE OR IN PART, THE COURT SHALL AWARD REASONABLE ATTORNEYS' FEES, COSTS, AND DISBURSEMENTS.

FOR PURPOSES OF THIS PART (A) OF SUBSECTION (4)(1), "PERSON" MEANS AN INDIVIDUAL, ASSOCIATION, CORPORATION, JOINT STOCK COMPANY, LABOR ORGANIZATION, LEGAL REPRESENTATIVE, MUTUAL COMPANY, PARTNERSHIP, UNINCORPORATED ORGANIZATION, THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR AN AGENCY OF THE STATE, OR ANY OTHER LEGAL ENTITY, AND INCLUDES AN AGENT OF A PERSON.

(b) The right, if serving in the military or living overseas, to have an absent voter ballot sent to them at least forty-five (45) days before an election upon application AND TO HAVE THEIR ABSENT VOTER BALLOT DEEMED TIMELY RECEIVED IF POSTMARKED ON OR BEFORE ELECTION DAY AND RECEIVED BY THE APPROPRIATE ELECTION OFFICIAL WITHIN SIX (6) DAYS AFTER SUCH ELECTION. FOR PURPOSES OF THIS PART (B) OF SUBSECTION (4)(1) A POSTMARK SHALL INCLUDE ANY TYPE OF MARK APPLIED BY THE UNITED STATES POSTAL SERVICE OR ANY DELIVERY SERVICE TO THE RETURN ENVELOPE, INCLUDING BUT NOT LIMITED TO A BAR CODE OR ANY TRACKING MARKS, WHICH INDICATES WHEN A BALLOT WAS MAILED.

(c) The right, once registered, to a "straight party" vote option on partisan general election ballots. In partisan elections, the ballot shall include a position at the top of the ballot by which the voter may, by a single selection, record a straight party ticket vote for all the candidates of one (1) party. The voter may vote a split or mixed ticket.

(d) The right to be automatically registered to vote as a result of conducting business with the secretary of state regarding a driver's license or personal identification card, unless the person declines such registration.

(e) The right to register to vote for an election by mailing a completed voter registration application on or before the fifteenth (15th) day before that election to an election official authorized to receive voter registration applications.

(f) The right to register to vote for an election by (1) appearing in person and submitting a completed voter registration application on or before the fifteenth (15th) day before that election to an election official authorized to receive voter registration applications, or (2) beginning on the fourteenth (14th) day before that election and continuing through the day of that election, appearing in person, submitting a completed voter registration application and providing proof of residency to an election official responsible for maintaining custody of the registration file where the person resides, or their deputies. Persons registered in accordance with subsection (1)(f) shall be immediately eligible to receive a regular or absent voter ballot.

(G) THE RIGHT, ONCE REGISTERED, TO PROVE THEIR IDENTITY WHEN VOTING IN PERSON OR APPLYING FOR AN ABSENT VOTER BALLOT IN PERSON BY (1) PRESENTING THEIR PHOTO IDENTIFICATION, INCLUDING PHOTO IDENTIFICATION ISSUED BY A FEDERAL, STATE, LOCAL, OR TRIBAL GOVERNMENT OR AN EDUCATIONAL INSTITUTION, OR (2) IF THEY DO NOT HAVE PHOTO IDENTIFICATION OR DO NOT HAVE IT WITH THEM, EXECUTING AN AFFIDAVIT VERIFYING THEIR IDENTITY. A VOTER SHALL NOT BE REQUIRED TO VOTE A PROVISIONAL BALLOT SOLELY BECAUSE THEY EXECUTED AN AFFIDAVIT TO PROVE THEIR IDENTITY.

(H)(g) The right, once registered, to vote an absent voter ballot without giving a reason, during the forty (40) days before an election, and the right to choose whether the absent voter ballot is applied for, received and submitted in person or by mail. During that time, election officials authorized to issue absent voter ballots shall be available in at least one (1) location to issue and receive absent voter ballots during the election officials' regularly scheduled business hours and for at least eight (8) hours during the Saturday and/or Sunday immediately prior to the election. Those election officials shall have the authority to make absent voter ballots available for voting in person at additional times and places beyond what is required herein. VOTERS SHALL HAVE THE RIGHT TO PROVE THEIR IDENTITY WHEN APPLYING FOR OR VOTING AN ABSENT VOTER BALLOT OTHER THAN IN PERSON BY PROVIDING THEIR SIGNATURE TO THE ELECTION OFFICIAL AUTHORIZED TO ISSUE ABSENT VOTER BALLOTS. THOSE ELECTION OFFICIALS SHALL: (1) VERIFY THE IDENTITY OF A VOTER WHO APPLIES FOR AN ABSENT VOTER BALLOT OTHER THAN IN PERSON BY COMPARING THE VOTER'S SIGNATURE ON THE ABSENT VOTER BALLOT APPLICATION TO THE VOTER'S SIGNATURE IN THEIR REGISTRATION RECORD; AND (2) VERIFY THE IDENTITY OF A VOTER WHO VOTES AN ABSENT VOTER BALLOT OTHER THAN IN PERSON BY COMPARING THE SIGNATURE ON THE ABSENT VOTER BALLOT ENVELOPE TO THE SIGNATURE ON THE VOTER'S ABSENT VOTER BALLOT APPLICATION OR THE SIGNATURE IN THE VOTER'S REGISTRATION RECORD. IF THOSE ELECTION OFFICIALS DETERMINE FROM EITHER OF THE COMPARISONS IN (1) OR (2) OF THIS PART (H) OF SUBSECTION (4)(1) THAT THE SIGNATURES DO NOT SUFFICIENTLY AGREE, OR IF THE VOTER'S SIGNATURE ON THE ABSENT VOTER BALLOT APPLICATION OR ABSENT VOTER BALLOT ENVELOPE IS MISSING, THE VOTER HAS A RIGHT TO BE NOTIFIED IMMEDIATELY AND AFFORDED DUE PROCESS, INCLUDING AN EQUITABLE OPPORTUNITY TO CORRECT THE ISSUE WITH THE SIGNATURE.

(I) THE RIGHT TO: (1) STATE-FUNDED PREPAID POSTAGE TO RETURN AN ABSENT VOTER BALLOT APPLICATION PROVIDED TO THEM BY A MICHIGAN ELECTION OFFICIAL; (2) STATE-FUNDED PREPAID POSTAGE TO RETURN A VOTED ABSENT VOTER BALLOT; AND (3) A STATE-FUNDED SYSTEM TO TRACK SUBMITTED ABSENT VOTER BALLOT APPLICATIONS AND ABSENT VOTER BALLOTS. THE SYSTEM SHALL PERMIT VOTERS TO ELECT TO RECEIVE ELECTRONIC NOTIFICATIONS REGARDING THE STATUS OF THE VOTER'S SUBMITTED ABSENT VOTER BALLOT APPLICATION AND ABSENT VOTER BALLOT, INFORM VOTERS OF ANY DEFICIENCY WITH THE VOTER'S SUBMITTED ABSENT VOTER BALLOT APPLICATION OR ABSENT VOTER BALLOT, AND PROVIDE INSTRUCTIONS FOR ADDRESSING ANY SUCH DEFICIENCY.

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(J) THE RIGHT TO AT LEAST ONE (1) STATE-FUNDED SECURE DROP-BOX FOR EVERY MUNICIPALITY, AND FOR MUNICIPALITIES WITH MORE THAN FIFTEEN THOUSAND (15,000) REGISTERED VOTERS AT LEAST ONE (1) DROP-BOX FOR EVERY FIFTEEN THOUSAND (15,000) REGISTERED VOTERS, FOR THE RETURN OF COMPLETED ABSENT VOTER BALLOT APPLICATIONS AND VOTED ABSENT VOTER BALLOTS. SECURE DROP-BOXES SHALL BE DISTRIBUTED EQUITABLY THROUGHOUT THE MUNICIPALITY AND SHALL BE ACCESSIBLE TWENTY-FOUR (24) HOURS PER DAY DURING THE FORTY (40) DAYS PRIOR TO ANY ELECTION AND UNTIL EIGHT (8) PM ON ELECTION DAY.

(K) THE RIGHT, ONCE REGISTERED, TO HAVE AN ABSENT VOTER BALLOT SENT TO THE VOTER BEFORE EACH ELECTION BY SUBMITTING A SINGLE SIGNED ABSENT VOTER BALLOT APPLICATION COVERING ALL FUTURE ELECTIONS. AN ELECTION OFFICIAL RESPONSIBLE FOR ISSUING ABSENT VOTER BALLOTS SHALL ISSUE AN ABSENT VOTER BALLOT FOR EACH ELECTION TO EVERY VOTER IN THE JURISDICTION WHO HAS EXERCISED THE RIGHT IN THIS PART (K) OF SUBSECTION (4)(1) AND SHALL NOT REQUIRE SUCH VOTER TO SUBMIT A SEPARATE APPLICATION FOR AN ABSENT VOTER BALLOT FOR ANY ELECTION. A VOTER'S EXERCISE OF THIS RIGHT SHALL BE RESCINDED ONLY IF: (1) THE VOTER SUBMITS A SIGNED REQUEST TO RESCIND; (2) THE VOTER IS NO LONGER QUALIFIED TO VOTE; (3) THE SECRETARY OF STATE OR THE ELECTION OFFICIAL RESPONSIBLE FOR ISSUING THE VOTER AN ABSENT VOTER BALLOT RECEIVES RELIABLE INFORMATION THAT THE VOTER HAS MOVED TO ANOTHER STATE, OR HAS MOVED WITHIN THIS STATE WITHOUT UPDATING THEIR VOTER REGISTRATION ADDRESS; OR (4) THE VOTER DOES NOT VOTE FOR SIX (6) CONSECUTIVE YEARS. THE EXERCISE OF THE RIGHT IN THIS PART (K) OF SUBSECTION (4)(1) SHALL REMAIN IN EFFECT WITHOUT THE NEED FOR A NEW ABSENT VOTER BALLOT APPLICATION WHEN THE VOTER CHANGES THEIR RESIDENCE IN THIS STATE AND UPDATES THEIR VOTER REGISTRATION ADDRESS.

(L)(h) The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections. THE SECRETARY OF STATE SHALL CONDUCT ELECTION AUDITS, AND SHALL SUPERVISE AND DIRECT COUNTY ELECTION OFFICIALS IN THE CONDUCT OF SUCH AUDITS. NO OFFICER OR MEMBER OF THE GOVERNING BODY OF A NATIONAL, STATE, OR LOCAL POLITICAL PARTY, AND NO POLITICAL PARTY PRECINCT DELEGATE, SHALL HAVE ANY ROLE IN THE DIRECTION, SUPERVISION, OR CONDUCT OF AN ELECTION AUDIT. PUBLIC ELECTION OFFICIALS SHALL MAINTAIN THE SECURITY AND CUSTODY OF ALL BALLOTS AND ELECTION MATERIALS DURING AN ELECTION AUDIT. ELECTION AUDITS SHALL BE CONDUCTED IN PUBLIC BASED ON METHODS FINALIZED AND MADE PUBLIC PRIOR TO THE ELECTION TO BE AUDITED. ALL FUNDING OF ELECTION AUDITS SHALL BE PUBLICLY DISCLOSED.

(M) THE RIGHT, ONCE REGISTERED, TO VOTE IN EACH STATEWIDE AND FEDERAL ELECTION IN PERSON AT AN EARLY VOTING SITE PRIOR TO ELECTION DAY. VOTERS AT EARLY VOTING SITES SHALL HAVE THE SAME RIGHTS AND BE SUBJECT TO THE SAME REQUIREMENTS AS VOTERS AT POLLING PLACES ON ELECTION DAY. AN EARLY VOTING SITE IS A POLLING PLACE AND SHALL BE SUBJECT TO THE SAME REQUIREMENTS AS AN ELECTION DAY POLLING PLACE, EXCEPT THAT AN EARLY VOTING SITE MAY SERVE VOTERS FROM MORE THAN SIX (6) PRECINCTS AND MAY SERVE VOTERS FROM MORE THAN ONE (1) MUNICIPALITY WITHIN A COUNTY. AN EARLY VOTING SITE SHALL ALSO BE SUBJECT TO THE SAME REQUIREMENTS AS AN ELECTION DAY PRECINCT, EXCEPT THAT ANY STATUTORY LIMIT ON THE NUMBER OF VOTERS ASSIGNED TO A PRECINCT SHALL NOT APPLY TO AN EARLY VOTING SITE. EACH EARLY VOTING SITE SHALL BE OPEN FOR AT LEAST NINE (9) CONSECUTIVE DAYS BEGINNING ON THE SECOND SATURDAY BEFORE THE ELECTION AND ENDING ON THE SUNDAY BEFORE THE ELECTION, FOR AT LEAST EIGHT (8) HOURS EACH DAY, AND MAY BE OPEN FOR ADDITIONAL DAYS AND HOURS BEYOND WHAT IS REQUIRED HEREIN AT THE DISCRETION OF THE ELECTION OFFICIAL AUTHORIZED TO ISSUE BALLOTS IN THE JURISDICTION CONDUCTING THE ELECTION. JURISDICTIONS CONDUCTING ELECTIONS WITHIN A COUNTY MAY ENTER INTO AGREEMENTS TO SHARE EARLY VOTING SITES. A JURISDICTION CONDUCTING AN ELECTION MAY ENTER INTO AN AGREEMENT WITH THE CLERK OF THE COUNTY IN WHICH IT IS LOCATED AUTHORIZING THE COUNTY CLERK TO CONDUCT EARLY VOTING FOR THE JURISDICTION. JURISDICTIONS CONDUCTING NON-STATEWIDE ELECTIONS MAY OFFER EARLY VOTING FOR SUCH ELECTIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS PART (M) OF SUBSECTION (4)(1). NO EARLY VOTING RESULTS SHALL BE GENERATED OR REPORTED UNTIL AFTER EIGHT (8) PM ON ELECTION DAY.

All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes. Nothing contained in this subsection shall prevent the legislature from expanding voters' rights beyond what is provided herein. This subsection and any portion hereof shall be severable. If any portion of this subsection is held invalid or unenforceable as to any person or circumstance, that invalidity or unenforceability shall not affect the validity, enforceability, or application of any other portion of this subsection.

(2) Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames.

(3) A COUNTY, CITY, OR TOWNSHIP CONDUCTING AN ELECTION MAY ACCEPT AND USE PUBLICLY-DISCLOSED CHARITABLE DONATIONS AND IN-KIND CONTRIBUTIONS TO CONDUCT AND ADMINISTER ELECTIONS. THE COUNTY, CITY, OR TOWNSHIP SHALL RETAIN DISCRETION OVER WHETHER TO ACCEPT OR USE ANY SUCH DONATIONS OR CONTRIBUTIONS. CHARITABLE DONATIONS AND IN-KIND CONTRIBUTIONS OF FOREIGN FUNDS OR FROM FOREIGN SOURCES ARE PROHIBITED.

Sec. 7. Boards of canvassers (1) THE OUTCOME OF EVERY ELECTION IN THIS STATE SHALL BE DETERMINED SOLELY BY THE VOTE OF ELECTORS CASTING BALLOTS IN THE ELECTION.

(2) A board of state canvassers of four members shall be established by law. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party. THE LEGISLATURE MAY BY LAW ESTABLISH BOARDS OF COUNTY CANVASSERS.

(3) IT SHALL BE THE MINISTERIAL, CLERICAL, NONDISCRETIONARY DUTY OF A BOARD OF CANVASSERS, AND OF EACH INDIVIDUAL MEMBER THEREOF, TO CERTIFY ELECTION RESULTS BASED SOLELY ON: (1) CERTIFIED STATEMENTS OF VOTES FROM COUNTIES; OR (2) IN THE CASE OF BOARDS OF COUNTY CANVASSERS, STATEMENTS OF RETURNS FROM THE PRECINCTS AND ABSENT VOTER COUNTING BOARDS IN THE COUNTY AND ANY CORRECTED RETURNS. THE BOARD OF STATE CANVASSERS IS THE ONLY BODY OR ENTITY IN THIS STATE AUTHORIZED TO CERTIFY THE RESULTS OF AN ELECTION FOR STATEWIDE OR FEDERAL OFFICE AND TO DETERMINE WHICH PERSON IS ELECTED IN SUCH ELECTION.

(4) IF THE CERTIFIED RESULTS FOR ANY OFFICE CERTIFIED BY THE BOARD OF STATE CANVASSERS SHOW A TIE AMONG TWO (2) OR MORE PERSONS, THE TIE SHALL BE RESOLVED AND THE WINNER CERTIFIED BY THE DRAWING OF LOTS UNDER RULES PROMULGATED BY THE BOARD OF STATE CANVASSERS. IF THE CERTIFIED RESULTS FOR AN OFFICE CERTIFIED BY A BOARD OF COUNTY CANVASSERS SHOW A TIE AMONG TWO (2) OR MORE PERSONS, THE TIE SHALL BE RESOLVED AND THE WINNER CERTIFIED BY SUCH BOARD OF CANVASSERS UNDER PROCEDURES PRESCRIBED BY LAW.

(5) THE CERTIFICATION OF ANY ELECTION RESULTS BY THE BOARD OF STATE CANVASSERS SHALL BE FINAL SUBJECT ONLY TO (A) A POST-CERTIFICATION RECOUNT OF THE VOTES CAST IN THAT ELECTION SUPERVISED BY THE BOARD OF STATE CANVASSERS UNDER PROCEDURES PRESCRIBED BY LAW; OR (B) A POST-CERTIFICATION COURT ORDER.

(6) A BOARD OF CANVASSERS IS AUTHORIZED TO CONDUCT POST-CERTIFICATION RECOUNTS OF ELECTION RESULTS UNDER PROCEDURES PRESCRIBED BY LAW.

(7) FOR PURPOSES OF THIS SECTION "TO CERTIFY" MEANS TO MAKE A SIGNED, WRITTEN STATEMENT.

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Article 2, § 4 Place and manner of elections.

Sec. 4. (1) Every citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights:

- (a) The right, once registered, to vote a secret ballot in all elections.
- (b) The right, if serving in the military or living overseas, to have an absent voter ballot sent to them at least forty-five (45) days before an election upon application.
- (c) The right, once registered, to a "straight party" vote option on partisan general election ballots. In partisan elections, the ballot shall include a position at the top of the ballot by which the voter may, by a single selection, record a straight party ticket vote for all the candidates of one (1) party. The voter may vote a split or mixed ticket.
- (d) The right to be automatically registered to vote as a result of conducting business with the secretary of state regarding a driver's license or personal identification card, unless the person declines such registration.
- (e) The right to register to vote for an election by mailing a completed voter registration application on or before the fifteenth (15th) day before that election to an election official authorized to receive voter registration applications.
- (f) The right to register to vote for an election by (1) appearing in person and submitting a completed voter registration application on or before the fifteenth (15th) day before that election to an election official authorized to receive voter registration applications, or (2) beginning on the fourteenth (14th) day before that election and continuing through the day of that election, appearing in person, submitting a completed voter registration application and providing proof of residency to an election official responsible for maintaining custody of the registration file where the person resides, or their deputies. Persons registered in accordance with subsection (1)(f) shall be immediately eligible to receive a regular or absent voter ballot.
- (g) The right, once registered, to vote an absent voter ballot without giving a reason, during the forty (40) days before an election, and the right to choose whether the absent voter ballot is applied for, received and submitted in person or by mail. During that time, election officials authorized to issue absent voter ballots shall be available in at least one (1) location to issue and receive absent voter ballots during the election officials' regularly scheduled business hours and for at least eight (8) hours during the Saturday and/or Sunday immediately prior to the election. Those election officials shall have the authority to make absent voter ballots available for voting in person at additional times and places beyond what is required herein.
- (h) The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections.

All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes. Nothing contained in this subsection shall prevent the legislature from expanding voters' rights beyond what is provided herein. This subsection and any portion hereof shall be severable. If any portion of this subsection is held invalid or unenforceable as to any person or circumstance, that invalidity or unenforceability shall not affect the validity, enforceability, or application of any other portion of this subsection.

- (2) Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames.

Article 2, § 6 Voters on tax limit increases or bond issues.

Sec. 6. Whenever any question is required to be submitted by a political subdivision to the electors for the increase of the ad valorem tax rate limitation imposed by Section 6 of Article IX for a period of more than five years, or for the issue of bonds, only electors in, and who have property assessed for any ad valorem taxes in, any part of the district or territory to be affected by the result of such election or electors who are the lawful husbands or wives of such persons shall be entitled to vote thereon. All electors in the district or territory affected may vote on all other questions.

Article 2, § 7 Boards of canvassers.

Sec. 7. A board of state canvassers of four members shall be established by law. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party.

Article 4, § 1 Legislative power.

Sec. 1. Except to the extent limited or abrogated by article IV, section 6 or article V, section 2, the legislative power of the State of Michigan is vested in a senate and a house of representatives.

Article 4, § 16 Legislature; officers, rules of procedure, expulsion of members.

Sec. 16. Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings, but shall not adopt any rule that will prevent a majority of the members elected thereto and serving therein from discharging a committee from the further consideration of any measure. Each house shall be the sole judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected thereto and serving therein, expel a member. The reasons for such expulsion shall be entered in the journal, with the votes and names of the members voting upon the question. No member shall be expelled a second time for the same cause.

Article 5, § 1 Executive power.

Sec. 1. Except to the extent limited or abrogated by article V, section 2, or article IV, section 6, the executive power is vested in the governor.

Article 5, § 13 Elections to fill vacancies in legislature.

Sec. 13. The governor shall issue writs of election to fill vacancies in the senate or house of representatives. Any such election shall be held in a manner prescribed by law.

Article 6, § 1 Judicial power in court of justice; divisions.

Sec. 1. Except to the extent limited or abrogated by article IV, section 6, or article V, section 2, the judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

Article 6, § 2 Justices of the supreme court; number, term, nomination, election.

Sec. 2. The supreme court shall consist of seven justices elected at non-partisan elections as provided by law. The term of office shall be eight years and not more than two terms of office shall expire at the same time. Nominations for justices of the supreme court shall be in the manner prescribed by law. Any incumbent justice

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whose term is to expire may become a candidate for re-election by filing an affidavit of candidacy, in the form and manner prescribed by law, not less than 180 days prior to the expiration of his term.

Article 6, § 8 Court of appeals; election of judges, divisions.

Sec. 8. The court of appeals shall consist initially of nine judges who shall be nominated and elected at non-partisan elections from districts drawn on county lines and as nearly as possible of equal population, as provided by law. The supreme court may prescribe by rule that the court of appeals sit in divisions and for the terms of court and the times and places thereof. Each such division shall consist of not fewer than three judges. The number of judges comprising the court of appeals may be increased, and the districts from which they are elected may be changed by law.

Article 6, § 23 Judicial vacancies, filling; appointee, term; successor; new offices.

Sec. 23. A vacancy shall occur in the office of judge of any court of record or in the district court by death, removal, resignation or vacating of the office, and such vacancy shall be filled by appointment by the governor. The person appointed by the governor shall hold office until 12 noon of the first day of January next succeeding the first general election held after the vacancy occurs, at which election a successor shall be elected for the remainder of the unexpired term. Whenever a new office of judge in a court of record, or the district court, is created by law, it shall be filled by election as provided by law. The supreme court may authorize persons who have been elected and served as judges to perform judicial duties for limited periods or specific assignments.

Article 6, § 26 Circuit court commissioners and justices of the peace, abolition; courts of limited jurisdiction.

Sec. 26. The offices of circuit court commissioner and justice of the peace are abolished at the expiration of five years from the date this constitution becomes effective or may within this period be abolished by law. Their jurisdiction, compensation and powers within this period shall be as provided by law. Within this five-year period, the legislature shall establish a court or courts of limited jurisdiction with powers and jurisdiction defined by law. The location of such court or courts, and the qualifications, tenure, method of election and salary of the judges of such court or courts, and by what governmental units the judges shall be paid, shall be provided by law, subject to the limitations contained in this article.

Present statutory courts.

Statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until they are abolished by law.

Article 7, § 3 Reduction of size of county.

Sec. 3. No organized county shall be reduced by the organization of new counties to less than 16 townships as surveyed by the United States, unless approved in the manner prescribed by law by a majority of electors voting thereon in each county to be affected.

Article 7, § 10 Removal of county seat.

Sec. 10. A county seat once established shall not be removed until the place to which it is proposed to be moved shall be designated by two-thirds of the members of the board of supervisors and a majority of the electors voting thereon shall have approved the proposed location in the manner prescribed by law.

Article 7, § 18 Township officers; term, powers and duties.

Sec. 18. In each organized township there shall be elected for terms of not less than two nor more than four years as prescribed by law a supervisor, a clerk, a treasurer, and not to exceed four trustees, whose legislative and administrative powers and duties shall be provided by law.

Article 7, § 22 Charters, resolutions, ordinances; enumeration of powers.

Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

Article 7, § 28 Governmental functions and powers; joint administration, costs and credits, transfers.

Sec. 28. The legislature by general law shall authorize two or more counties, townships, cities, villages or districts, or any combination thereof among other things to: enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking.

Officers, eligibility.

Any other provision of this constitution notwithstanding, an officer or employee of the state or any such unit of government or subdivision or agency thereof, except members of the legislature, may serve on or with any governmental body established for the purposes set forth in this section and shall not be required to relinquish his office or employment by reason of such service.

Article 8, § 3 State board of education; duties.

Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

Superintendent of public instruction; appointment, powers, duties.

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law.

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EXHIBIT 2

STATE OF MICHIGAN
DEPARTMENT OF STATE
BOARD OF STATE CANVASSERS

In re Promote The Vote's
Petition to Amend
Michigan's Constitution

**Challenges to the Form of Petition Filed by Promote The Vote to Amend
Michigan's Constitution**

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INTRODUCTION

Promote The Vote, by way of its ballot initiative (the “Petition”), is asking the citizens of our State to fundamentally alter the rules and regulations governing their elections; the scope of their ballot initiative and legislative powers; and the authority of the Michigan Supreme Court. But, the Petition fails to identify the inherent conflict between its wording and our current Constitution. This Board must protect our State’s voters from this defective Petition by rejecting it and preventing its inclusion on the November ballot.

In Michigan, changing state law, whether constitutional or statutory, through the citizen-initiative petition process requires voters be properly informed about what they are being asked to approve. It is blackletter law that initiative efforts that do not *strictly adhere* to the constitutional and statutory provisions that implement this bedrock principle cannot, under any circumstance, be placed on the ballot.¹

The Petition must be rejected because it fails to strictly adhere, as required, to the form required by the Michigan Constitution and state statute. Specifically, it doesn’t identify or republish all provisions of the Michigan Constitution that it would abrogate, if approved.²

In fact, the Petition fails to identify provisions of the Michigan Constitution that it abrogates five times over.

First, the Petition abrogates Article 2, § 5 of the Michigan Constitution, which designates a single day, every other year, for elections—the “first Tuesday after the first Monday of

¹ See *Citizens Protecting Michigan’s Constitution v Secretary of State*, 280 Mich App 273, 276; 761 NW2d 210 (2008) (“Constitutional modification requires *strict adherence* to the methods and approaches included in the constitution itself. Shortcuts and end runs to revise the constitution, which ignore the pathways specifically set forth by the framers, cannot be tolerated.”) (emphasis added).

² See Const. 1963, Article 12, § 2; see also MCL 168.482(3).

November.” This time-honored tradition of “Election Day” links voting and results to a point in time, helping ensure that results reflect the will of the electorate informed by a common universe of information. By expanding the voting period to ten days (or more, at the whim of local officials), the Petition would vitiate Election Day, rendering Article 2, § 5 “wholly inoperative.” Under the Petition, Election Day would no longer link voting and results to a point in time. Rather, it would become just one day among ten or more days spanning at least two separate months during which votes are cast. Unlike Election Day, when all available information can affect a voter’s decision-making, new information that emerges during the Petition’s Election Days proposal may not be incorporated into the collective will expressed in the results. Elections can be won or lost—and often are—based on what happens during a 10-day period. Despite its abrogation of Election Day, the Petition does not identify or republish the Election Day provision of Article 2, § 5, as required. Its form is therefore defective, as it fails to put Michigan voters on notice that it would eliminate a long-standing and critical feature of their election system.

Second, the Petition abrogates Article 2, § 2 of the Michigan Constitution, which specifically allows the Legislature to “exclude persons” from voting because of “mental incompetence” or “commitment to a jail or penal institution.” The Petition renders this provision wholly inoperative because, if adopted, it provides that “no person,” including the members of our state Legislature, may enact any law—however reasonable or constitutional that law may be—that has the intent or effect of denying the fundamental right to vote. This conflict between our current Constitution and the Petition’s proposed amendments is clear and unmistakable. But, it’s a conflict the Petition doesn’t bother to address through identification and republication. That’s another incurable defect that warrants rejection.

Third, the Petition abrogates Article 2, § 9, which empowers the people of Michigan to “propose laws and to enact and reject laws.” The Petition renders this provision wholly inoperative by eliminating the people’s right to directly regulate aspects of voting and elections, including the right to enact reasonable, constitutional laws that affect voting. Notably, the Petition proposes to remove such legislative authority from both the people and the state Legislature. Yet while the Petition identifies and republishes the legislative authority conferred upon the state House and Senate by Article 4, § 1 as a provision it would amend, it is silent as to the otherwise coextensive initiative authority conferred upon the people by Article 2, § 9. The Petition’s silence as to Article 2, § 9—failing to notify the people of Michigan that it would strip them of initiative power—particularly when coupled with its concession as to Article 4, § 1, is a defect of form that compels its rejection.

Fourth, the Petition abrogates Article 7, § 8 of the Michigan Constitution, which grants legislative authority to county boards of supervisors. Here again, the Petition acknowledges that the proposed amendments would amend analogous and materially indistinguishable constitutional grants of legislative authority to other state and local entities. These include Article 4, § 1, which grants legislative authority to the state House and Senate, as discussed above; Article 7, § 18, which grants legislative authority to township officers; and Article 7, § 22, which grants legislative authority to cities and villages. The Petition is defective because it fails to notify voters that it would eliminate—or abrogate—legislative authority otherwise conferred by their Constitution, a fact made all the more clear by the Petition’s concession regarding its abrogation of Article 4, § 1.

Fifth, the Petition abrogates Article 6, § 5 of the Michigan Constitution, which grants exclusive authority to the Michigan Supreme Court over rules of practice and procedure. The Petition, if adopted, would render this exclusive grant of authority wholly inoperative by usurping

powers from the Supreme Court. It would prohibit the Supreme Court from adopting rules of practice and procedure regarding election and voting cases and takes specific decisions about matters of practice and procedure out of the Court's control. A petition that asks Michigan voters to fundamentally alter the powers of their Supreme Court cannot move forward because it fails to identify and republish the relevant constitutional language of Article 6, § 5.

The Board should reject the Petition for each of these independent defects.

ARGUMENT

I. The Board must reject the Petition because it would abrogate five provisions of the Michigan Constitution without identifying and republishing them, as strictly required by law.

The Michigan Constitution and state statute safeguard voters from unwittingly making unwanted changes to the law and Constitution through the initiative process.³ Among other things, an initiative petition is invalid and must be rejected, without exception, unless it identifies and republishes the constitutional provisions it would abrogate. This requirement is so exacting that the to-be-abrogated provisions must appear on a petition *exactly*—word for word, jot and tiddle—as they appear in the Constitution.

The Petition at issue in this case fails to republish five provisions of the Michigan Constitution that it would abrogate. It thus fails to strictly comply with the form of a successful initiative petition, and the Board must reject it.

³ See Const. 1963, Article 12, § 2; see also MCL 168.482(3).

A. The Board must enforce constitutional and statutory requirements regarding the form of initiative petitions and must reject petitions that do not strictly adhere to Michigan law.

The Board exists to safeguard Michigan elections.⁴ Its authority is both created and limited by state statutes and the Constitution.⁵ It “has no inherent power” beyond what is vested to “faithfully discharge the duties of the office,” which include executing its constitutional and legal duties and adhering to its constitutional and legal constraints.⁶

One of the Board’s many constitutional duties is to strictly enforce the statutory requirement that initiative petitions “be in the form” as “*prescribed by law*.”⁷ This means that the Board must review petitions for strict compliance with the law and must “arrest[] the initiation and enjoin[] submission” of any proposal that does not strictly adhere to the Legislature’s prescribed form.⁸ There are no exceptions. While form errors often belie substantive problems, even mere drafting errors that do not appear substantive require the Board to reject a petition.

⁴ Const 1963, Article 2, § 7. (“A board of state canvassers of four members shall be established by law.”)

⁵ *Mich Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 515; 708 NW2d 139 (2005)

⁶ Const 1963, Article 11, § 1; see also MCL 168.22c (requiring Board members to take the oath); *Deleeuw v State Bd of Canvassers*, 263 Mich App 496; 693 NW2d 179 (2004) (citations omitted).

⁷ Const 1963, Article 12, § 2.

⁸ See *Stand Up for Democracy v Sec’y of State*, 492 Mich 588, 161; 822 NW2d 159 (2012) (“[B]ecause MCL 168.482(2) uses the mandatory term ‘shall’ and does not, by its plain terms, permit certification of deficient petitions with regard to form or content, a majority of this Court holds that the doctrine of substantial compliance is inapplicable to referendum petitions submitted for certification.”); *Citizens Protecting Michigan’s Constitution v Secretary of State*, 280 Mich App 273, 276; 761 NW2d 210 (2008) (“Constitutional modification requires strict adherence to the methods and approaches included in the constitution itself. Shortcuts and end runs to revise the constitution, which ignore the pathways specifically set forth by the framers, cannot be tolerated.”) (emphasis added).

B. The Michigan Constitution and state statute require that a petition proposing to amend the Constitution identify and republish all constitutional provisions that would be “abrogated” by its adoption.

Under both the Michigan Constitution and state statute, the Petition must identify and republish all provisions of the Constitution that will be “abrogated” by its adoption.⁹ Specifically, Article 12, § 2 of the Constitution requires that the “existing provisions of the constitution which would be altered or abrogated” by the Petition “shall be published in full as provided by law.” Likewise, Michigan state statute requires that a proposal that “would alter or abrogate an existing provision of the constitution . . . 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.’”¹⁰

The Michigan Supreme Court has defined the contours of the republication requirement. Any provision that is “amend[ed]” or “replace[d]” must be published. As relevant here, a petition “abrogates” a provision if it “would essentially eviscerate” it, rendering it “wholly inoperative.”¹¹ The purpose of this publication requirement is not hard to discern: it seeks to “definitely advise the elector ‘as to the purpose of the proposed amendment and what provision of the constitutional law it modifie[s] or supplant[s].’”¹²

⁹ See *Protect Our Jobs v Bd. of State Canvassers*, 492 Mich 763, 773; 822 NW2d 534 (2012); *Citizens Protecting Michigan’s Constitution v Secretary of State*, 324 Mich App 561, 599; 922 NW2d 404 (2018), aff’d 503 Mich 42; 921 NW2d 247 (2018) (“Proposals to amend the Constitution must publish those sections that the proposal will alter or abrogate.”)

¹⁰ MCL 168.482(3) (emphasis added). The Secretary of State’s guidance includes the same language. See **Exhibit 1**, *Sponsoring a Statewide Initiative, Referendum, or Constitutional Amendment Petition* at 18-19.

¹¹ *Id.*

¹² *Coalition to Defend Affirmative Action & Integration v Bd of State Canvassers*, 262 Mich App 395, 401; 686 NW2d 287 (2004) (citing *Massey v Secretary of State*, 457 Mich 410, 417; 579 NW2d 862 (1998)).

Abrogation is not necessarily something that jumps off the page, obvious to any reader. Assessing possible abrogation requires “careful consideration of the actual language used in both the existing provision and the proposed amendment.”¹³ Each of the provision’s “subparts, sentences, clauses, or even potentially, single words” must be considered.¹⁴ If the petition would do more than effect a potential change in the meaning of a provision, if it would render any part or subpart of it inoperative, republication is required.¹⁵ In short, “[w]hen... the proposed amendment would render the entire [constitutional] provision or some discrete component of the provision wholly inoperative, abrogation would occur, and republication of the existing language is required.”¹⁶

The Supreme Court has provided some guidance for conducting the careful analysis that is required. For example, incompatibility between a petition and existing provision is a key hallmark of abrogation.¹⁷ Further, “a proposed amendment more likely renders an existing provision inoperative if the existing provision creates a mandatory requirement or uses language providing an exclusive power or authority.”¹⁸ That is because “any change to such a provision would tend to negate the specifically conferred constitutional requirement.”¹⁹

Thus, proposed changes to provisions conferring “complete” or “exclusive” authority are abrogated even when a petition would have “affected only a small fraction” of the authority at

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *School Dist. of City of Pontiac v City of Pontiac*, 262 Mich 338, 344; 247 NW 474 (1933); *Coalition to Defend Affirmative Action & Integration v Bd of State Canvassers*, 262 Mich App 395, 401; 686 NW2d 287 (2004).

¹⁶ *Protect Our Jobs*, 492 Mich at 792

¹⁷ *Id.* at 783.

¹⁸ *Id.* at 783.

¹⁹ *Id.* at 783.

issue.²⁰ The Court explained that “[b]ecause complete control necessarily communicates the exclusivity of control, any infringement on that control abrogates that exclusivity” and “an amendment that contemplates anything less than complete control logically renders that [exclusive] power...inoperative.”²¹

C. The Petition fails to identify or republish five provisions of the Michigan Constitution that will be abrogated by the proposed amendment.

Here, the Petition would abrogate five provisions of the Michigan Constitution without identifying or republishing them, as required.

1. The Petition would abrogate Article 2, § 5 of the Michigan Constitution.

Article 2, § 5 of the Michigan Constitution deals with the “Time of Elections.” It 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.”

If the Petition is adopted, Article 2, § 4, which addresses the “Place and Manner of Elections,” will state that “[e]very Citizen of the United States who is an elector qualified to vote in Michigan shall have”:

(M) THE RIGHT, ONCE REGISTERED, TO VOTE IN EACH STATEWIDE AND FEDERAL ELECTION IN PERSON AT AN EARLY VOTING SITE PRIOR TO ELECTION DAY. VOTERS AT EARLY VOTING SITES SHALL HAVE THE SAME RIGHTS AND BE SUBJECT TO THE SAME REQUIREMENTS AS AN ELECTION DAY POLLING PLACE, EXCEPT THAT AN EARLY VOTING SITE MAY SERVE VOTERS FROM MORE THAN SIX (6) PRECINCTS AND MAY SERVE VOTERS FROM MORE THAN ONE (1) MUNICIPALITY WITHIN A COUNTY. AN EARLY VOTING SITE SHALL ALSO BE SUBJECT TO THE SAME REQUIREMENTS AS AN ELECTION DAY

²⁰ *Id.* at 790-791, 791 n 32.

²¹ *Id.* at 790-791.

PRECINCT, EXCEPT THAT ANY STATUTORY LIMIT ON THE NUMBER OF VOTERS ASSIGNED TO A PRECINCT SHALL NOT APPLY TO AN EARLY VOTING SITE. EACH EARLY VOTING SITE SHALL BE OPEN FOR AT LEAST NINE (9) CONSECUTIVE DAYS BEGINNING ON THE SECOND SATURDAY BEFORE THE ELECTION AND ENDING ON THE SUNDAY BEFORE THE ELECTION, FOR AT LEAST EIGHT (8) HOURS EACH DAY, AND MAY BE OPEN FOR ADDITIONAL DAYS AND HOURS BEYOND WHAT IS REQUIRED HEREIN AT THE DISCRETION OF THE ELECTION OFFICIAL AUTHORIZED TO ISSUE BALLOTS IN THE JURISDICTION CONDUCTING THE ELECTION. JURISDICTIONS CONDUCTING ELECTIONS WITHIN A COUNTY MAY ENTER INTO AGREEMENTS TO SHARE EARLY VOTING SITES. A JURISDICTION CONDUCTING AN ELECTION MAY ENTER INTO AN AGREEMENT WITH THE CLERK OF THE COUNTY IN WHICH IT IS LOCATED AUTHORIZING THE COUNTY CLERK TO CONDUCT EARLY VOTING FOR THE JURISDICTION. JURISDICTIONS CONDUCTING NON-STATEWIDE ELECTIONS MAY OFFER EARLY VOTING FOR SUCH ELECTIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS PART (M) OF SUBSECTION (4)(1). NO EARLY VOTING RESULTS SHALL BE GENERATED OR REPORTED UNTIL AFTER EIGHT (8) PM ON ELECTION DAY.²²

The Petition abrogates the Election Day provision of the Michigan Constitution, which requires that “all elections” for national, state, county and township offices be held on one, single day—Election Day.²³ 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. When voting for any particular office occurs over a period of more than a week, the “election”—the choice of a particular person to hold that office—cannot be said to have occurred on a single, specified day. In fact, depending on the distribution of voting over the period, the “election,” the moment the die is cast and the victor is established, even if not known, very likely will have occurred well before the date specified by the Constitution. Indeed, a candidate who requires the

²² **Exhibit 2**, Promote the Vote Petition at 2.

²³ Const 1963, Article 2, § 5.

full pre-Election Day period to persuade and turn out voters—not to mention those who vote for that candidate—would be materially harmed by the Petition’s abrogation of the Election Day provision.

The Constitution’s Election Day provision is an entrenched feature of Michigan law that would lose all relevant meaning were the Petition to succeed. The Michigan Legislature and the Michigan Supreme Court have spoken about Election Day as being on a single date.²⁴ And Maryland’s highest court,²⁵ interpreting state constitutional provisions that were at the time nearly identical to those in Michigan’s constitution, concluded that early voting provisions of the type that the Petition would implement are incompatible with an election occurring on a single, specified date.²⁶ As the court explained, when the Constitution requires an election to occur on a specified day, “ballot casting must begin and end on the same day.”²⁷ Accordingly, that court concluded, “any statute that allows for a ballot to be cast before the prescribed day must be in derogation of the Constitution.”²⁸ The same treatment applies to Michigan’s same Election Day provision.

Notably, Michigan’s Election Day provision is preserved, even in the context of alternative voting methods like absentee voting. The Supreme Court has recently addressed the constitutional

²⁴ See *id.*; see also *Attorney General v Clarke*, 489 Mich 61, 63; 802 NW2d 130 (2011) (“Michigan law defines ‘general election’ as ‘the election held on the November regular election *date* in an even numbered year.’”); *Groesbeck v Bolton*, 206 Mich 403, 410; 173 NW 542 (1919) (“The term ‘general election’ means, as here used, the general election held in November in the even years.”); MCL 168.2(j) (defining “general election” as “the election held on the November regular election *date* in an even numbered year.”); MCL 168.641(1) (“[A]n election held under this act shall be held on 1 of the following regular election dates...[t]he November regular election *date*, which is the first Tuesday after the first Monday in November.”).

²⁵ See *Lamone v Capozzi*, 396 Md 53; 912 A2d 674 (2006).

²⁶ See *Id.* at 83-84 (reasoning “the election shall be held *on* a specific date”) (emphasis in original).

²⁷ *Id.* at 84.

²⁸ *Id.* at 83.

provision for absentee voting as an *exception* to the Election Day provision, available to voters in special need or under certain circumstances with its own unique set of safeguards.²⁹ In fact, this exception has been enshrined in the Michigan Constitution since 1908.³⁰ The Maryland Court of Appeals similarly recognized that state’s constitutional allowances for absentee voting did not undercut the Constitution’s simultaneous requirement for the rest of the election to occur on the same day, holding clearly that “apart from absentee voting, in-person ballot casting must begin and end on the same day.”³¹ While Michiganders are well within their rights to seek to amend the state Constitution to allow for early voting, doing so undoubtedly abrogates the current Election Day provision and therefore must be noticed.

In sum, the Petition would drain the Election Day provision of all meaning, rendering it wholly inoperative with respect to its current role in Michigan’s democracy. This is not a matter of legal construction, but of factual reality. Today, “the first Tuesday after the first Monday in November in each even-numbered year” is a date of monumental significance. It is the day the people of this state exercise their collective will and vote—at a single point in time—for the direction and future of their state. Under the Petition, that Tuesday would become little more than an administrative deadline. Nothing of any particular significance needs to happen on that day. No person wishing to affect Michigan’s future needs to cast a ballot on that previously all-important date. It is nothing more than the last date for emptying the ballot box. The election that

²⁹ MCL 168.761 (referring to “absentee voting” rather than “Election Day voting”); *See League of Women Voters of Michigan v. Sec’y of State*, 333 Mich App 1 (2020) (referencing the right to vote by absentee ballot as distinct from Election Day, and using Election Day as a single day to denote the final day to return absentee ballot).

³⁰ See Const 1963, Article 3, § 1.

³¹ *Lamone*, 396 Md at 83.

would have occurred that day absent the Petition may very well have been decided in the preceding days and weeks.

The Petition's form is defective. The Petition would abrogate Article 2, § 5 of the Michigan Constitution, and the Board must reject it for failure to republish that provision and having thereby deprived the people of this state of proper notice of its transformative effect on the constitutional significance of Election Day.

2. The Petition would abrogate Article 2, § 2 of the Michigan Constitution.

Article 2, § 2 of the Michigan Constitution permits (but doesn't require) the Legislature to exclude from voting two groups of persons: those who are mentally incompetent and those who are incarcerated. The provision specifically says this:

The legislature may by a law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.

Meanwhile, the Petition would amend Article 2, § 4(1)(a) to provide that “[e]very Citizen of the United States who is an elector qualified to vote in Michigan shall have”:

THE FUNDAMENTAL RIGHT TO VOTE, INCLUDING BUT NOT LIMITED TO the right, once registered, to vote a secret ballot in all elections. NO PERSON SHALL: (1) ENACT OR USE ANY LAW, RULE, REGULATION, QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE; (2) ENGAGE IN ANY HARASSING, THREATENING, OR INTIMIDATING CONDUCT; OR (3) USE ANY MEANS WHATSOEVER, ANY OF WHICH HAS THE INTENT OR EFFECT OF DENYING, ABRIDGING, INTERFERING WITH, OR UNREASONABLY BURDENING THE FUNDAMENTAL RIGHT TO VOTE.³²

Framed differently, then, whereas Article 2, § 2 expressly authorizes our State's Legislature to exclude persons from voting for certain reasons the Petition would destroy that legislative authorization root and branch. The incompatibility between our Constitution and the Petition in

³² **Exhibit 2**, Promote the Vote Petition at 1.

this regard is obvious.³³ Yet the Petition fails to highlight that conflict for our State’s voters. That’s an incurable defect. The Petition should be rejected.

This isn’t some academic consideration. The Michigan Supreme Court has found abrogation of our Constitution under far less egregious circumstances. In *Protect our Jobs v State Board of Canvassers*, 492 Mich 763; 822 NW2d 534 (2012), one of the petitioners sought to amend the state Constitution. Specifically, the language of their ballot initiative would’ve provided that every casino authorized by law was entitled to receive a liquor license that allowed the on-premises service of alcohol. *Id.* at 790. That was a problem because, at the time, Article 4, Section 40 of the state Constitution gave the Liquor Control Commission “complete control” over the sale of alcoholic beverages in our state. Since the Petition’s language obviated the Liquor Control Commission’s exclusive authority in that regard, it was found to abrogate the relevant provision of the state Constitution. And, as a result, the petitioner’s failure to republish that section of the Constitution on their petition was found to be a fatal defect. *Id.* at 791.

This dispute is subject to the same analysis. Again Article 2, Section 2 of the state Constitution allows the Legislature to exclude certain people—namely, incarcerated individuals and the mentally infirm—from voting. However, unlike the example in *Protect Our Jobs*, which still allowed the Liquor Control Commission to exercise at least some control over the sale of alcoholic beverages (but not “complete control” as required by the Constitution), this Petition’s proposed amendment seeks to completely eliminate the Legislature’s constitutional authority to exclude certain people from voting. So, the Petition “abrogates” our current Constitution. As a result, the petitioner should’ve published that portion of the Constitution on the Petition itself. It

³³ See, e.g., *Protect Our Jobs*, 492 Mich at 783.

didn't. And, consistent with the analytic framework of Protect our Jobs, the failure to do so is fatal to the proposed amendment and justifies its rejection.

3. The Petition would abrogate Article 2, § 9 of the Michigan Constitution.

Article 2, § 9 of the Michigan Constitution deals with “Initiative and referendum; limitations; appropriations; petitions.” It states:

The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

Again, if the proposed amendments contained in the Petition are adopted, Article 2, § 4 (1)(a) will state that “[e]very Citizen of the United States who is an elector qualified to vote in Michigan shall have”:

THE FUNDAMENTAL RIGHT TO VOTE, INCLUDING BUT NOT LIMITED TO the right, once registered, to vote a secret ballot in all elections. NO PERSON SHALL: (1) ENACT OR USE ANY LAW, RULE, REGULATION, QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE; (2) ENGAGE IN ANY HARASSING, THREATENING, OR INTIMIDATING CONDUCT; OR (3) USE ANY MEANS WHATSOEVER, ANY OF WHICH HAS THE INTENT OR EFFECT OF DENYING, ABRIDGING, INTERFERING WITH, OR UNREASONABLY BURDENING THE FUNDAMENTAL RIGHT TO VOTE.

ANY MICHIGAN CITIZEN OR CITIZENS SHALL HAVE STANDING TO BRING AN ACTION FOR DECLARATORY, INJUNCTIVE, AND/OR MONETARY RELIEF TO ENFORCE THE RIGHTS CREATED BY THIS PART (A) OF SUBSECTION

(4)(1) ON BEHALF OF THEMSELVES, THOSE ACTIONS SHALL BE BROUGHT IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH A PLAINTIFF RESIDES. IF A PLAINTIFF PREVAILS IN WHOLE OR IN PART, THE COURT SHALL AWARD REASONABLE ATTORNEYS' FEES, COSTS, AND DISBURSEMENTS.

FOR PURPOSES OF THIS PART(A) OF SUBSECTION (4)(1), "PERSON" MEANS AN INDIVIDUAL, ASSOCIATION, CORPORATION, JOINT STOCK COMPANY, LABOR ORGANIZATION, LEGAL REPRESENTATIVE, MUTUAL COMPANY, PARTNERSHIP, UNINCORPORATED ORGANIZATION, THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR AN AGENCY OF THE STATE, OR ANY OTHER LEGAL ENTITY, AND INCLUDES AN AGENT OF A PERSON.³⁴

The Petition abrogates Article 2, § 9, which reserves for the people of Michigan "the power to propose laws and to enact and reject laws" through the citizen-initiative petition process.³⁵

Whereas the existing provision empowers the people to enact on their own any laws the state legislature may enact, *See* Article 4, § 1, the Petition would restrict both the people and the Legislature from "enact[ing]...any law... which has the intent or effect" of "interfering" with "the fundamental right to vote." This prohibition encompasses reasonable and otherwise constitutional restrictions and interferences. It 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. It thereby places a one-way ratchet on election law, removing from both the people and Legislature powers they would otherwise maintain to regulate the voting process in several important respects.

The Petition itself effectively concedes that it abrogates Article 2, § 9 by admitting that it abrogates Article 4, § 1.³⁶ The two provisions reflect coextensive authorities to enact statutes.

³⁴ **Exhibit 2**, Promote the Vote Petition at 1.

³⁵ Const 1963, Article 2, § 9.

³⁶ **Exhibit 2**, Promote the Vote Petition at 3.

Under the Constitution, “[t]he power of initiative extends only to laws which the legislature may enact under this constitution.”³⁷ And the Michigan Supreme Court has recognized that the Legislature’s legislative power and Michiganders’ initiative power are just different sides of the same coin.³⁸ If the Petition abrogates the Legislature’s power by removing from its plenary jurisdiction the power to regulate voting, it likewise abrogates the people’s initiative power. Yet whereas the Petition republishes Article 4, § 1, as it is required to do, it fails to republish Article 2, § 9. The omission of the latter is fatal.

4. The Petition would abrogate Article 7, § 8 of the Michigan Constitution.

Article 7, § 8 of the Michigan Constitution addresses “Legislative, administrative, and other powers and duties” of County Boards of Supervisors, and it states: “Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law.”

If the proposed amendments contained in the Petition are adopted, the relevant portion of Article 2, § 4 (1)(a) will state that “[e]very Citizen of the United States who is an elector qualified to vote in Michigan shall have”:

THE FUNDAMENTAL RIGHT TO VOTE, INCLUDING BUT NOT LIMITED TO the right, once registered, to vote a secret ballot in all elections. NO PERSON SHALL: (1) ENACT OR USE ANY LAW, RULE, REGULATION, QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE; (2) ENGAGE IN ANY HARASSING, THREATENING, OR INTIMIDATING CONDUCT; OR (3) USE ANY MEANS WHATSOEVER, ANY OF WHICH HAS THE INTENT OR EFFECT OF DENYING, ABRIDGING, INTERFERING WITH, OR UNREASONABLY BURDENING THE FUNDAMENTAL RIGHT TO VOTE.³⁹

³⁷ Const 1963, Article 2, § 9.

³⁸ *Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich 49, 66; 340 NW2d 817 (1983) (citations, quotation marks, and footnotes omitted).

³⁹ **Exhibit 2**, Promote the Vote Petition at 1.

The Petition abrogates Article 7, § 8, which grants legislative authority to county boards of supervisors. As noted above, the Petition, if approved, would make it impossible to “enact or use” a “law, rule regulation, qualification, prerequisite, standard, practice, or procedure” that would affect election administration.⁴⁰ Because there is no limitation within the Petition, there is seemingly no amount of regulation that would be permissible—even perfectly constitutional and innocuous voting regulations that ensure functional election administration, like rules regarding felon voting, voter registration, polling hours of operation, or early and absentee voting. The Petition would effectively prohibit any public body from enacting or enforcing a law or regulation that has anything to do with voting whatsoever. As a result, the Petition necessarily interferes with, and is wholly incompatible with, the grant of legislative authority to county boards of supervisors in Article 7, § 8. The Petition abrogates that “discrete component of the provision...and republication of the existing language is required.”⁴¹

Again, the Petition facially concedes the abrogation of Article 7, § 8 by identifying and republishing analogous constitutional provisions that grant similar authority. The Petition recognizes that, among the “[p]rovisions of existing constitution” that are “altered or abrogated by the proposal if adopted” are: (1) Article 4, § 1, which states that “the legislative power of the State of Michigan is vested in a senate and a house of representatives”; (2) Article 7, § 18, which authorizes township officers to exercise the “legislative and administrative powers and duties...provided by law”; and (3) Article 7, § 22, which authorizes cities and villages to “adopt resolutions and ordinances related to its municipal concerns, property, and government, subject to the constitution and law.”⁴² Because the Petition would concededly abrogate the Constitution’s

⁴⁰ **Exhibit 2**, Promote the Vote Petition at 1.

⁴¹ *Protect Our Jobs*, 492 Mich at 792.

⁴² **Exhibit 2**, Promote the Vote Petition at 3-4.

grant of the legislative authority to the state Legislature, township officers, and city and village authorities, it also necessarily abrogates the grant of legislative authority to county boards of supervisors under Article 7, § 8.

The Petition abrogates but fails to identify and republish Article 7, § 8. It therefore must be rejected.

5. The Petition would abrogate Article 6, § 5 of the Michigan Constitution.

Article 6, § 5 of the Michigan Constitution is entitled “Court rules; distinctions between law and equity; master in chancery.” It 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.

If the Petition is adopted, Article 2, § 4 (1)(a) will state that “[e]very Citizen of the United States who is an elector qualified to vote in Michigan shall have”:

THE FUNDAMENTAL RIGHT TO VOTE, INCLUDING BUT NOT LIMITED TO the right, once registered, to vote a secret ballot in all elections. NO PERSON SHALL: (1) ENACT OR USE ANY LAW, RULE, REGULATION, QUALIFICATION, PREREQUISITE, STANDARD, PRACTICE, OR PROCEDURE; (2) ENGAGE IN ANY HARASSING, THREATENING, OR INTIMIDATING CONDUCT; OR (3) USE ANY MEANS WHATSOEVER, ANY OF WHICH HAS THE INTENT OR EFFECT OF DENYING, ABRIDGING, INTERFERING WITH, OR UNREASONABLY BURDENING THE FUNDAMENTAL RIGHT TO VOTE.

ANY MICHIGAN CITIZEN OR CITIZENS SHALL HAVE STANDING TO BRING AN ACTION FOR DECLARATORY, INJUNCTIVE, AND/OR MONETARY RELIEF TO ENFORCE THE RIGHTS CREATED BY THIS PART (A) OF SUBSECTION (4)(1) ON BEHALF OF THEMSELVES, THOSE ACTIONS SHALL BE BROUGHT IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH A PLAINTIFF RESIDES. IF A PLAINTIFF PREVAILS IN WHOLE OR IN PART, THE COURT SHALL

AWARD REASONABLE ATTORNEYS' FEES, COSTS, AND DISBURSEMENTS.

FOR PURPOSES OF THIS PART(A) OF SUBSECTION (4)(1), "PERSON" MEANS AN INDIVIDUAL, ASSOCIATION, CORPORATION, JOINT STOCK COMPANY, LABOR ORGANIZATION, LEGAL REPRESENTATIVE, MUTUAL COMPANY, PARTNERSHIP, UNINCORPORATED ORGANIZATION, THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR AN AGENCY OF THE STATE, OR ANY OTHER LEGAL ENTITY, AND INCLUDES AN AGENT OF A PERSON.⁴³

The Petition abrogates Article 6, § 5 by "erod[ing]" the Supreme Court's "exclusive and total control" over practice and procedure.⁴⁴ The Petition, on its face, purports to foreclose reasonable practices and procedures, that have "the intent or effect" of "interfering" with "the fundamental right to vote."⁴⁵ It further creates a cause of action to enforce the rights provided in the provision; designates who has standing in such a case; and establishes venue for such actions.⁴⁶ Yet, absent the Petition, such matters of "[p]ractice and procedure" in Michigan's courts are "constitutionally confided to the Supreme Court,"⁴⁷ and the Courts' "exclusive province."⁴⁸

⁴³ **Exhibit 2**, Promote the Vote Petition at 1.

⁴⁴ *Protect Our Jobs*, 492 Mich at 791.

⁴⁵ **Exhibit 2**, Promote the Vote Petition at 1.

⁴⁶ **Exhibit 2**, Promote the Vote Petition at 1.

⁴⁷ *Assoc of Businesses Advocating Tariff Equity v Pub Serv Com'n*, 173 Mich App 647, 658-659; 434 NW2d 648 (1988).

⁴⁸ *Stenzel v Best Buy Co, Inc*, 320 Mich App 262; 906 NW2d 801 (2017) ("It is beyond rational argument that the question whether a pleading can be amended as a matter of course or right or whether a motion for leave to amend must be filed is indeed purely an issue of practice and procedure, falling within the exclusive province of our Supreme Court.").

Indeed, it is axiomatic—and “beyond question”⁴⁹—that the Supreme Court’s constitutional authority to adopt rules of practice and procedure is “exclusive.”⁵⁰

In short, the Petition would “nullify” the Supreme Court’s exclusive rulemaking authority “by taking specific decisions” about matters of practice and procedure regulating voting—even entirely constitutional and pragmatic decision—“out of [its] control.”⁵¹ That is a telltale sign of abrogation, which means that the Petition’s failure to identify and republish Article 6, § 5 renders it invalid.

CONCLUSION

Because the Petition fails to include all the constitutional provisions that would be abrogated by the proposed amendments, the Petition fails to strictly adhere to the form requirements in Article 12, § 2 of the Michigan Constitution and MCL 168.482. As such, the Board must reject the Petition.

Respectfully submitted,

/s/ Jonathan B. Koch

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⁴⁹ *McDougall v Schanz*, 461 Mich 15, 26; 597 NW2d 148 (1999) (citations omitted) (“It is beyond question that the authority to determine rules of practice and procedure rests exclusively with this Court. Indeed, this Court’s primacy in such matters is established in [Article 6, § 5 of] our 1963 Constitution.”).

⁵⁰ *People v Comer*, 500 Mich 278, 299; 901 NW2d 553 (2017) (“But this Court is constitutionally vested with the exclusive authority to establish and modify rules of practice and procedure in this state.”); *Staff v Johnson*, 242 Mich App 521, 531; 619 NW2d 57 (2000), citing Const. 1963, Article 6, § 5 (“The Supreme Court is given exclusive rulemaking authority in matters of practice and procedure.”).

⁵¹ *Protect Our Jobs*, 492 Mich at 790-792.

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EXHIBIT 3

STATE OF MICHIGAN
DEPARTMENT OF STATE
BOARD OF STATE CANVASSERS

In re: Promote the Vote 2022 Initiative Petition

**PROMOTE THE VOTE 2022'S RESPONSE TO
DEFEND YOUR VOTE'S CHALLENGE**

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Attorneys for Promote the Vote 2022

Dated: August 23, 2022

Submitted to:

Board of State Canvassers via MDOS-Canvassers@Michigan.gov
Director Jonathan Brater via braterj@michigan.gov
Adam Fracassi via fracassia@michigan.gov

INTRODUCTION

“Of 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 v Secretary of State*, 202 Mich 629, 643; 168 NW 709 (1918).

This statement is as true today as it was when the Michigan Supreme Court wrote it over 100 years ago. Promote the Vote 2022 (“PTV22”) submitted more than 664,000 signatures in support of an initiative petition to amend the Michigan Constitution (the “Proposal”) 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. Nevertheless, Defend Your Vote (“DYV”) submitted a challenge (the “Challenge”) to this Board. DYV is not arguing that PTV22 submitted insufficient signatures, which is the “clearest and most stringent limitation on initiative amendments[.]” *Citizens Protecting Michigan’s Constitution v Secretary of State*, 503 Mich 42, 75; 921 NW2d 247 (2018). Nor is DYV challenging the form of the petition, which was previously approved by this Board on February 11, 2022. Rather, in what can only be described as a desperate attempt to fabricate a challenge just for the sake of filing one, DYV contends that PTV22 failed to include five provisions of the Constitution that the Proposal would allegedly abrogate – meaning render wholly inoperative – if passed by the voters.

Fortunately, for this Board and Michigan electors, our Supreme Court has already answered the question of what constitutes an alteration or abrogation sufficient to nullify the more than 664,000 signatures procured to support the Proposal. Applying those standards, which this Board must do, leaves no doubt that DYV’s Challenge is legally and factually deficient and cannot possibly succeed. Indeed, to deny certification here would reward and incentivize parties to make any argument, no matter how frivolous, to block certification of an initiative with which they

disagree, even when such an initiative is clearly entitled to placement on the ballot. Such action by this Board would gravely damage the integrity of this body at a time when many of our democratic institutions are under attack and undermine the validity of this entire process. PTV22 urges the Board to decline DYV's invitation to do so.

DYV does not argue that PTV22 failed to set forth any provision that would be *altered* by the Proposal; rather, DYV argues that PTV22 failed to include five provisions of the Constitution that would allegedly be *abrogated* by the Proposal.¹ But the Michigan Supreme Court instructs that “an amendment only abrogates an existing provision when it renders that provision wholly inoperative.” *Protect Our Jobs v Board of State Canvassers*, 492 Mich 763,773; 822 NW2d 534 (2012) (also “reaffirm[ing] 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.”). This is because the purpose of the publication requirement is to inform “ordinary voters” who are not “constitutional lawyers.” *Massey v Secretary of State*, 457 Mich 410, 417; 579 NW2d 862 (1998). Simply put, the Challenge does not even allege must less establish – nor could it – that these five provisions of the Constitution would be rendered “wholly inoperative” or constitute a “change that would essentially eviscerate an existing provision” as Michigan law requires. *Protect Our Jobs*, 492 Mich at 773.

The Board should, therefore, do that which it is required to do by our Constitution and the Michigan Supreme Court. Applying these established standards to DYV's Challenge leads to only one possible result: DYV's Challenge is frivolous and must be rejected outright. Adhering to its duties, this Board must certify the Proposal for the November 2022 General Election ballot.

¹As discussed herein, while DYV only argues that the Proposal would abrogate each of the five identified provisions, which is clearly not possible, these provisions would also not be “altered” by the Proposal if it is adopted by the electorate in November.

ARGUMENT

I. Applicable Legal Standards

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).]

The seminal case on whether a proposed ballot question would alter or abrogate a provision of the Michigan Constitution is *Protect Our Jobs*. Writing for the majority, Justice Zahra surveyed the historical record and began the majority opinion by noting that the Michigan Supreme Court “has consistently protected the right of the people to amend their Constitution” by way of “petition and popular vote.” 492 Mich at 772.

Against this backdrop, the Court held that, consistent with decades of precedent,² 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). 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

² The majority in *Protect Our Jobs* concluded that the standards applicable to evaluating the term “abrogate” as stated in *Massey v Secretary of State*, 457 Mich 410; 579 NW2d 862 (1998), *Ferency v Secretary of State*, 409 Mich 569; 297 NW2d 544 (1980), and *Sch Dist of City of Pontiac v City of Pontiac*, 262 Mich 338; 247 NW 474 (1933) were “sound” and re-affirmed those cases and their reasoning. *Protect Our Jobs*, 492 Mich at 781.

intact.” *Id.* at 782.³ Thus, “[t]he republication requirement applies only to alteration of the actual text of an existing provision.” *Id.* (citing *Massey*, 457 Mich at 418).

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 “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).

The standard for requiring republication because of an alleged abrogation of a current provision of the Constitution is even more exacting and difficult for a challenger such as DYV 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). According to the Supreme Court, 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.

Put another way, 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

³ While DYV’s Challenge does not claim that the Proposal would alter existing provisions of the Constitution, PTV22 believes that setting forth this standard and the historical record upon which it is based provides context for the Board and also makes clear that the identified provisions would be neither altered nor abrogated by the Proposal if it is adopted by the electorate in November.

consistent with the new provision, i.e., the two provisions are not incompatible.” *Id.* 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.”). These standards were again applied by the Michigan Supreme Court to reject a claim that the proposal submitted by Voters Not Politicians abrogated the oath requirement set forth in Article 11, Section 1. The Supreme 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).⁴

In providing further clarity on the terms “alter” and “abrogate,” the Supreme 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

⁴ The Oath Clause of the Michigan Constitution provides: “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.” *See* Const 1963, art 11, § 1. VNP’s proposal required applicants to “attest under oath that they meet the qualifications set forth in this section; and either that they affiliate with one of the two political parties with the largest representation in the Legislature . . . and if so, identify the party with which they affiliate, or that they do not affiliate with either of the major parties.” *Citizens Protecting Michigan’s Constitution*, 503 Mich at 106, n 197. The challengers in that case argued that this requirement violated the Oath Clause by requiring an additional requirement prohibited by that clause. The Court flatly dismissed this argument in a footnote, concluding that requiring an applicant to swear to their qualifications for office in no way rendered the Oath Clause “wholly inoperable.” *Id.*

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)].

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). The Supreme Court was thus clear that the precise types of arguments advanced by DYV in this Challenge should be rejected outright as inconsistent with Michigan law and the Constitution:

[We] caution[] that a more expansive definition of ‘alter or abrogate’ would ‘chill’ the ability of the people to amend their Constitution by potentially requiring the petition circulator to append the entire Constitution to ensure the validity of the petition to amend the Constitution. [*Protect Our Jobs*, 492 Mich at 780.]

At bottom, DYV’s Challenge ignores 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). Perhaps foreseeing a challenge such as this, the Michigan Supreme Court warned that when applying the “alter or abrogate” requirement, “arcane or obscure interpretations” should be avoided. *Massey*, 457 Mich at 420.

II. Each Challenge Raised Should be Rejected by the Board

A. The Proposal Would Not Eliminate Election Day.

DYV asks the Board to deny certification based on the absurd argument that Election Day would be rendered “wholly inoperative” by the Proposal. (*See* Challenge at 10-11.) Any election official in Michigan who will still be responsible for setting up and staffing polling locations, absentee counting boards, and receiving boards on Election Day would tell the Board that this argument is absurd. Specifically, the Challenge alleges 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.]

While conceding that Michigan has long permitted absentee voting, which permits registered voters to cast their votes months prior to Election Day, DYV nonetheless contends 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* Challenge at 10.) DYV further claims 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 believes to be its strongest – is nonsensical.

While citing to an inapplicable Maryland case as support for its novel theory, DYV ignores controlling and recent case law in Michigan. 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. That right was incorporated into Article 2, Section 4, which addresses the place and manner of elections. In *League of Women Voters v Secretary of State*, 333 Mich App 1; 959 NWd 1 (2020), 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. 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. *Id.* at 21-22. That holding applies here.

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.

Moreover, contrary to DYV’s suggestion, “Election Day” is not a defined term, whether by Constitution or statute.⁵ 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

⁵ To accept DYV’s argument would mean that all state laws establishing early voting would be pre-empted by 2 USC 7, setting the first Tuesday after the first Monday in November as national election day for members of Congress. DYV points to no authority for such a conclusion because none exists. In fact, 20 states allow voters to cast ballots in-person before election day. The Proposal, if anything, modernizes election administration in Michigan recognizing that qualified voters will participate in our democracy in greater numbers when hurdles to voting are lowered. Early voting does just that.

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). 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. 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.”)

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. As explained by the 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.”

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 is simply wrong. 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. For these reasons, the Board should reject the Challenge.

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

DYV claims 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* Challenge at 13 (citing Const 1963, art 2, § 2).) 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.

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. 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).⁶ 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. Should the Legislature choose to exercise that option, such persons would not be qualified

⁶ Note that the qualifications for registering to vote have been further amended by Federal law and these are not the current standards for registering to vote in Michigan.

to vote in Michigan. Accordingly, they would not be entitled to the “fundamental right to vote.” This is not a complicated analysis.

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. Accordingly, the Legislature’s permissive authority as described by Article 2, Section 2 would remain intact as is.

Given that Article 2, Section 2 is not even implicated, much less abrogated by the Proposal, PTV22 was certainly not required to publish that provision as abrogated. The Board should, therefore, reject this Challenge.

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

DYV’s third challenge asserting that the Proposal would abrogate the citizen-held right to initiative and referendum under Article 2, Section 9 fares no better. 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. According to DYV, because the Proposal would prohibit the Legislature from enacting laws that unreasonably interfere with the right to vote it “would block all manner of legislation, from whatever source, heretofore understood to be perfectly constitutional, including laws regarding felon voting,⁷ registration, and polling hours of operation.” (*See* Challenge at 16.)

This argument is, again, legally and factually unsound and provides no basis to deny certification of the Proposal. DYV seems to believe the Legislature (or the people through the

⁷ As discussed previously, the Legislature would remain free to enact laws to “exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.” Const 1963, art 2, § 2. Likewise, DYV’s claim that the Proposal would “block all manner of legislation” is categorically untrue and is either an intentional misstatement or apparent failure to even read the Proposal.

initiative) can currently pass any restriction on voting without limits, constitutional or otherwise. Therefore, according to DYV, by explicitly and expressly enshrining in the Michigan Constitution the right to vote – something which PTV22 assumed was not controversial – this somehow eviscerates the people’s “right” to impose laws contrary to that right.

The fact that DYV even makes this argument further demonstrates the importance and necessity of the Proposal, which would expressly provide in the Michigan Constitution that qualified electors in Michigan do, in fact, have the fundamental right to vote.

Moreover, DYV conflates 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)). 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.

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. For example, a citizen-led statutory ballot initiative seeking to ban all absent voting would violate Article 2, Section 4 and would be rejected as 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 rejected as unconstitutional by a court.

In short, DYV's claim that the Proposal eviscerates the people's power of initiative and referendum is plainly wrong and should be disregarded in its entirety.

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

DYV also argues 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* Challenge at 17.) DYV claims 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. Indeed, DYV states that a county commission would be prohibited from enacting anything that relates to "election administration." Not only does DYV's argument fail to even arguably meet the high burden of showing that this provision is rendered wholly inoperative, but the argument is also preposterous and shows just how desperate DYV is to create an issue where none clearly exists.

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.⁸

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 local election officials in the performance of their duties” under the provisions of the Michigan Election Law. *See* MCL 168.21. 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.

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

The Michigan Election Law also continues the previously established Board of State Canvassers. *See* MCL 168.22(1). This Board is responsible for a host of duties, including

⁸ Even if DYV was not mistaken in this regard, the Proposal does not make county boards of supervisors wholly inoperative which, as discussed, would be required to constitute an “abrogation” for purposes of MCL 168.482(3).

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

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. 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. 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.

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

This is it – this is the structure of Michigan’s election’s system. And a county commission plays no role in the process whatsoever. DYV does not provide any support for its argument to the contrary because it cannot do so. 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. 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 any of their powers and duties. Literally nothing would change or be impacted with respect to this provision of the Constitution. 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.

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

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.

DYV argues that the Proposal would abrogate Article 6, Section 5 by “eroding” the Supreme Court’s “exclusive and total control” over practice and procedure” including apparently, the Supreme Court’s right to interfere with the citizen’s right to vote. (*See* 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 so nonsensical it is difficult to formulate a succinct and coherent response.

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. 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. *See, e.g., 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); *Kern v Kern-Koskela*, 320 Mich App 212, 222; 905 NW2d 453 (2017) (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). 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).

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).

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

For these reasons, the Proposal could not possibly abrogate Article 6, Section 5 and DYV’s Challenge should be rejected.

CONCLUSION

For all the reasons above, this Board should assemble the courage to do the right thing, at the right time, and adhere to the standards established by the Michigan Supreme Court. Applying

the standards discussed above, all of DYV's arguments are patently frivolous. PTV22 submitted more than 664,000 signatures and has complied with all form requirements. Realizing there is no legitimate basis for a challenge, DYV made one up that is pure fiction. The Challenge is illegitimate and is meant as a clear distraction without any possible basis for success. This Board should do what it is obligated by law to do – certify the Proposal and let the voters decide if they want their Constitution to expressly provide for their right to vote.

Respectfully submitted,

CLARK HILL



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EXHIBIT 4



STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

August 25, 2022

RECEIVED by MSC 9/6/2022 4:22:14 PM

STAFF REPORT:
PROMOTE THE VOTE 2022

SPONSOR: Promote the Vote 2022

DATE OF FILING: July 11, 2022

NUMBER OF VALID SIGNATURES REQUIRED: 425,059 signatures¹

TOTAL FILING: 664,029 signatures² on 141,339 sheets

| | Signatures | Sheets |
|--|---------------------|----------------|
| Total number of signatures filed | 664,029 | 141,339 |
| Signatures identified as invalid | Less: 13,614 | 4,298 |
| Torn, mutilated, or damaged petition sheet | 357 | 85 |
| Missing information in the circulator certificate (e.g. circulator did not date the petition sheet) | 2,955 | 635 |
| Failure of out-of-state circulator to check box accepting Michigan jurisdiction | 1,154 | 240 |
| Failure to identify whether the circulator was paid or unpaid | 1,436 | 399 |
| Signature errors (all signatures crossed out, no signature) | 9 | 20 |
| Invalid county names (e.g. city entered instead of county, no county name and sheet circulated in multiple counties) | 1,755 | 759 |
| Jurisdiction errors (no city in county by name given by signer, jurisdiction name given by signer does not align with address, no street address or rural route given) | 1,112 | 800 |
| Date errors (no date given by signer, date of birth entered, or date given by signer is later than circulator's date of signing) | 2,818 | 842 |

¹ [Mich. Const. Art. XII § 2](#) (Petitions proposing constitutional amendments must 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.”)

² The total number of signatures filed represents a cushion of 56.2% over the minimum number required. Once wholly invalid sheets were excluded from the universe, the sponsor needed to attain a signature validity rate of at least 68.5% for staff to recommend immediate certification of the petition (i.e., 389/568), or a 62.5% validity rate to land in the “sample more signatures” range (i.e., 355/568). The validity rate found in this sample is 78.3% (445/568).

| | | |
|---|----------------|----------------|
| Submitted to the wrong drive (sheets submitted were for another initiative drive) | 2,018 | 518 |
| Total initial “universe” of potentially valid signatures remaining after face review | 650,415 | 137,041 |

SAMPLING PROCEDURE:

On February 7, 1980, the Board of State Canvassers adopted a sampling procedure for canvassing petitions seeking an initiative, referendum, or state constitutional amendment.³ That procedure consists of a “face review” of petition sheets, followed by a random sample of a representative portion of the universe of signatures. Signatures in the samples are examined to confirm that the signatory is a person registered to vote in Michigan, that the signature on the petition sheet matches the signature contained in the Qualified Voter File (QVF), and that the entry does not contain another fatal defect (for instance, a jurisdiction, date, or address error). The number of signatures confirmed to be valid out of the sampled signatures determines whether staff recommends or rejects the subject of the petition for certification. In rare instances, the number of valid signatures falls into a span between the acceptance and rejection thresholds, triggering a second, larger signature sample to increase the precision of the sample and the accuracy of the results.

Two petitions seeking to amend the state constitution were filed on July 11, 2022. In order to meet the constitutional and statutory deadline for the Board to determine the sufficiency of both 2022 petitions, staff processed the petitions simultaneously. BOE staff and temporary assistants under BOE supervision expended approximately 4,000 person-hours reviewing both petitions. A detailed description of the procedure adopted by the Board and the specific process employed by staff can be found in the resources that have been posted on the Board’s [website](#).

After reviewing the universe, Promote the Vote (PTV) objected to several of staff’s decisions to disqualify petition sheets during face review. Specifically, PTV objected to 77 sheets containing 264 signatures. Upon review of PTV’s objections, staff did agree with some objections and reintroduced a total of 55 sheets containing 200 signatures to the universe, increasing the universe of valid signatures to 650,615.

As explained above, conducting a face review and removing invalid petition sheets from the universe is an initial stage in petition review under the methodology approved by the Board. The adjustment of the universe had no discernable effect on the outcome of the random sample. The addition of 200 signatures to an initial total of 650,415 means the universe was 99.97% accurate. Because of the small margin of the adjustment and the large difference between the number of valid signatures found and the number of signatures required, staff’s recommendations are unchanged regardless of whether the universe of valid signatures is 650,415 or 650,615. There were no changes to the formula below based on the additional 200 signatures.

³ See *Random Sample Signature Canvassing in Michigan*, Michigan Department of State (1990), attached to this staff report, which describes in more detail the process summarized here.

Based on PTV’s total universe of 650,615 face valid signatures, the statistical methodology required the following numbers of valid signatures out of the 568⁴ sampled in order to trigger the following results:

| <u>Number of valid signatures</u> | <u>Formula result</u> |
|-----------------------------------|------------------------|
| 389 or more | Certify |
| 355-388 | Sample more signatures |
| 354 or fewer | Deny certification |

SIGNATURE SAMPLE:

| | |
|---|------------------|
| Total number of sampled signatures | 568 |
| Total number of signatures determined to be invalid | Less: 123 |
| Signer not registered to vote | 60 |
| No address given | 3 |
| No city or township in county known by name given by signer | 5 |
| Street address given is outside city or township listed | 12 |
| More than one jurisdiction listed | 2 |
| No signature given | 7 |
| Incomplete signature | 5 |
| No date given by signer | 1 |
| Signer dated after circulator date | 3 |
| Signer dated before first date authorized | 2 |
| Error in circulator certificate (circulator did not sign certificate, circulator wrote ineligible date) | 2 |
| Error in petition heading (ineligible county name) | 1 |
| Damaged or mutilated petition form (mandatory elements obscured by bleed-through) | 3 |
| Miscellaneous (signature did not match signature contained within the QVF) | 17 |
| Total number of possibly valid signatures in sample before challenge was processed | 445 |

CHALLENGE

On August 18, 2022, Defend Your Vote (DYV) submitted a challenge to the form of the petition, arguing that the petition fails to include all of the constitutional provisions that would be abrogated by the proposed amendments. Specifically, the challenge alleges that two sections of the petition would abrogate provisions in the Michigan Constitution and that those sections of the Constitution should have been listed in the petition.

⁴ When initially released, staff erroneously included two sheets in the sample where the sampled signature was crossed out. Staff later removed these two lines from the sample as the line contained no information and should not have been included in the sample. Accordingly, the sample was reduced by two.

First, DYV argues that the ten-day voting period proposed in the amendment would abrogate the constitutional provision for a single election day. They argue that this requires inclusion of Article II, section 5, designating a single day, every other year, for elections—the “first Tuesday after the first Monday of November.”

Second, DYV argues that the petition’s language in proposed Article II, § 4(1)(a)(1)—which prohibits any person from enacting or using any law, rule, regulation, qualification, prerequisite, standard, practice, or procedure that has the intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote—would remove that power from the people of Michigan and other legislative and judicial bodies. As such, DYV argues that the following sections should have been listed as being abrogated by the petition:

- Article II, section 2, allowing the legislature to by law exclude persons from voting “because of mental incompetence or commitment to a jail or penal institution.”
- Article II, section 9, providing for the people’s power to “propose laws and to enact and reject laws.”
- Article VII, section 8, granting legislative authority to county boards of supervisors.
- Article VI, section 5, providing for the Michigan Supreme Court to modify, amend, and simplify by general rules the practice and procedure in all Michigan courts.

PROMOTE THE VOTE’S RESPONSE TO CHALLENGE

In its response, PTV argues the Board should reject the legal challenge because the petition language does not abrogate Michigan’s constitution. Specifically, PTV argues that “ ‘an amendment only abrogates an existing provision when it renders that provision wholly inoperative.’” Quoting *Protect Our Jobs v Board of State Canvassers*, 492 Mich 763,773; 822 NW2d 534 (2012). They further argue that neither section of Michigan’s constitution are rendered wholly inoperative or represent a change that would “eviscerate an existing provision.” *Id.*

Regarding the Election Day provision in Article 2, section 5, PTV argues that the provision is not rendered wholly inoperative because the proposal would provide that voters could cast their ballot in person prior to Election Day and that Election Day would remain as currently prescribed by the Constitution.

PTV urges the Board to reject the remaining arguments as the challenged sections of Michigan’s Constitution are not altered or abrogated by PTV’s petition. Namely, PTV argues the petition does not prescribe who is or is not a qualified voter (Article 2, section 2); it does not prohibit or limit the authority of a citizen-led initiative (Article 2, section 9); it does not implicate county commissions (Article 7, § section); and does not impact the Supreme Court’s powers (Article 6, section 5).

STAFF EVALUATION OF CHALLENGE

Article XII, section 2 of the Constitution requires that all of the following must be published as provided in law, posted at each polling place, and provided to news media: the proposed amendment; existing provisions of the constitution that would be altered or abrogated by the proposed amendment; and the question as it will appear on the ballot. The Michigan Election

Law provides that the circulated form of the petition include a list of provisions of the constitution that would be altered or abrogated by the proposal if adopted. MCL 168.482.

The circulated petition includes the language required by section 482 and a list of sections to be altered or abrogated; the question raised by the challenge is whether additional sections of the Constitution should have been included. In 1933, the Michigan Supreme Court set forth the following standard:

[T]he 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. We think the requirement in substance is this: That in case a proposed constitutional provision amends or replaces ("alters or abrogates") a specific provision of the Constitution, that such provision should be published along with the proposed amendment; that other provisions which are still operative, though possibly they may need thereafter to be construed in conjunction with the amending provision, need not necessarily be published. *School Dist v Pontiac*, 262 Mich 338, 247 NW 474, 1933 Mich LEXIS 879.

That case was decided under a previous version of the Michigan Constitution, but more recently a similar standard has been applied in evaluating the Michigan Constitution of 1963: "An existing constitutional provision is altered or abrogated if the proposed amendment would add to, delete from, or change the existing wording of the provision, or would render it wholly inoperative." *Ferency v Secretary of State*, 409 Mich 569, 597; 297 NW2d 544 (1980) The fact that a provision will be affected by a proposed amendment does not necessarily mean it is "altered or abrogated." *Id* at 596-597; see also *Protect Our Jobs*, 492 Mich 763, 781 (2012); *Citizens Protecting Michigan's Constitution v. Sec'y of State*, 503 Mich 42 (2018).

The challenge alleges not that a required element on the form (sections of the constitution abrogated) was wholly omitted, but rather that additional sections should have been included as part of this element under the Michigan Constitution. This challenge raises legal arguments pertaining to the meaning of the Michigan Constitution as interpreted by the Michigan Supreme Court; staff makes no recommendation as to the merits of the legal arguments raised.

FINAL RESULT OF SIGNATURE SAMPLE:

| <u>Number of valid signatures</u> | <u>Formula result</u> | <u>Sample result</u> |
|-----------------------------------|------------------------|----------------------|
| 389 or more | Certify | 445 |
| 355-388 | Sample more signatures | |
| 354 or fewer | Deny certification | |

ESTIMATED NUMBER OF VALID SIGNATURES FOR PETITION:

Based on the results of the random sample, it is estimated that the petition contains 507,780 valid signatures (at a confidence level of 100%),⁵ 62,760 signatures more than the minimum threshold for certification and 102,697 more than the point at which the petition would be denied certification.

STAFF RECOMMENDATION: Staff recommends that the Board approve certification of this petition.

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

This staff report is being published on August 25, 2022, at least two business days prior to the August 31, 2022 meeting at which the Board of State Canvassers will consider the sufficiency of the Promote the Vote petition in accordance with MCL 168.476(3) (“At least 2 business days before the board of state canvassers meets to make a final determination on challenges to and sufficiency of a petition, the bureau of elections shall make public its staff report concerning disposition of challenges filed against the petition.”).

⁵ The formula result confidence level is 1.0000, meaning there is a 100% chance that the petition contains sufficient signatures. In other words, there is a 100% statistical probability that certification is the correct result.

EXHIBIT 5



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

February 2022

**SPONSORING A STATEWIDE INITIATIVE, REFERENDUM
OR CONSTITUTIONAL AMENDMENT PETITION**

The Michigan Constitution provides:

“The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum.” [Article 2, § 9](#) of the 1963 Michigan Constitution.

“Amendments may be proposed to this constitution by petition of the registered electors of this state.” [Article 12, § 2](#) of the 1963 Michigan Constitution.

These rights are invoked through the statewide ballot proposal petitioning process, which is governed by the [Michigan Election Law](#) and overseen by the [Secretary of State](#) and [Board of State Canvassers](#). Once a petition is filed with the Secretary of State, signatures are subjected to a verification process and the Board of State Canvassers determines whether the petition contains enough valid signatures to qualify for placement on the ballot at the next even-year, general November election.

This publication outlines legal requirements and provides guidance to those interested in launching a petition drive to initiate new legislation, amend or repeal existing laws, subject newly enacted laws to a referendum vote, or amend the state constitution. There are different filing deadlines in effect for the 2021-2022 election cycle. This guide also highlights best practices which, although not legally required, are offered so that sponsors may minimize the risk that an error could disqualify the petition.

Legislative changes enacted in late 2018 and subsequent legal developments in 2019-2020 altered the process for preparing and circulating statewide ballot proposal petitions. [Public Act 608 of 2018](#) included changes in the petition format, established a ceiling on the number of voters in a single Congressional district who could sign a petition, and imposed additional regulatory requirements on paid petition circulators. On January 24, 2022, the Michigan Supreme Court issued its opinion in *League of Women Voters of Michigan v. Secretary of State*, Case No. 163711, finding provisions of the law constitutional and other provisions unconstitutional.

Importantly, the Michigan Supreme Court concluded that its decision, as it relates to the petition form requirements, would not have retroactive effect and would not be applied to signatures obtained before January 24, 2022. However, **“any signature gathered after January 24, 2022 must be on a petition that conforms to the requirements of MCL 168.482(7).”** *Id.* (emphasis added). **Therefore, as of January 24, 2022, petition**

sponsors must ensure that the form of their petition contains the paid circulator check box. Signatures on petition sheets without the check box obtained after January 24, 2022 will be rejected.

We appreciate your interest in the statewide ballot proposal petition circulation process. If you have any questions regarding this publication, contact the Michigan Department of State, Bureau of Elections, at (517) 335-3234 or Elections@Michigan.gov, and visit our website www.Michigan.gov/Elections. Correspondence may be mailed, hand delivered, or sent via overnight delivery to the Richard H. Austin Building – 1st Floor, 430 West Allegan Street, Lansing, Michigan 48933. **Be sure to call ahead and schedule an appointment before visiting in-person** as office staffing is limited due to COVID.

Statewide proposal sponsors are subject to the registration and reporting requirements of the [Michigan Campaign Finance Act](#). For questions regarding these obligations, please refer to the publication, [Getting Started as a Ballot Question Committee](#) or email Disclosure@Michigan.gov.

TABLE OF CONTENTS

GENERAL UPDATES p. 4

SECTION I: OVERVIEW pp. 5-13

Important Note

- A. 2022 Filing Deadlines and Signature Requirements
- B. Consultations Regarding Technical Form Requirements
- C. Mandatory Pre-Circulation Petition Filing Requirement
- D. Optional Pre-Circulation Process for “Approval of the Content of the Petition Summary”
- E. Optional Pre-Circulation “Approval as to Form” Process
- F. Circulation on a Countywide Form or City/Township Form
- G. Circulation Period
- H. Law Regarding Non-Resident Petition Circulators
- I. Invalidation of Signatures if Circulator Provides False or Fraudulent Information
- J. Prohibited Conduct
- K. Filing, Canvass and Disposition of Proposal

SECTION II: PETITION FORMAT REQUIREMENTS pp. 14-22

Important Note

- A. Sheet Size
- B. Circulator Payment Status Checkbox
- C. Circulator Compliance Statement
- D. Identification of Petition Type
- E. Petition Summary
- F. Presentation of Proposal
- G. Identification of County or City/Township of Circulation
- H. Warning to Petition Signers
- I. Entry Spaces for Petition Signers
- J. Certificate of Circulator
- K. Warning to Circulators
- L. Instruction to Circulator and Space for Circulator’s Signature and Address
- M. Identification of Petition Sponsor
- N. Extension for Instructional or Promotional Language
- O. Clarification of Proposed Initiated Law, Referendum of Legislation or Constitutional Amendment
- P. Type Size and Font

SECTION III: FILING INSTRUCTIONS AND AFFIDAVIT pp. 23-24

- A. Filing Location
- B. Printer’s Affidavit

SECTION IV: PRESCRIBED FORMAT FOR COUNTYWIDE FORMS pp. 25-26

GENERAL UPDATES

On February 11, 2022, the Board of State Canvassers voted 2-2 to reject approval as to form of initiative petitions that included a union label with text that is not in 8-point type face, basing the decision on the requirement in MCL 168.482 that petition sheets comply with MCL 168.544c's requirement for 8-point typeface on initiative petitions.

The Bureau of Elections has previously recommended for approval as to form petition sheets with a union label without evaluating the typeface size on any text contained within the label. The Bureau will continue to recommend for approval petition sheets with union labels without respect to typeface; however, these petitions might not be approved as to form by the Board. The Michigan Department of State has requested an Attorney General opinion on the question of whether MCL 168.544c typeface requirements apply to text contained within union labels.

Petition circulators should consult with legal counsel on whether to submit signatures on petition sheets including union labels with non-8 point type that were approved as to form prior to February 11, 2022; and whether to circulate or submit signatures on sheets with union labels with non-8 point type after February 11, 2022.

SECTION I: OVERVIEW

Important Note: Legislative changes enacted in late 2018 and subsequent legal developments altered the process for preparing and circulating statewide ballot proposal petitions. Among other changes, [Public Act 608 of 2018](#) modified the petition format and signature gathering process. The Michigan Supreme Court in [League of Women Voters of Michigan v. Secretary of State](#) has declared many provisions of the law unconstitutional.

A summary of the legislative changes and the Court's opinion and order regarding their enforceability follows:

| Proposed Requirement (2018 PA 608) | Supreme Court Opinion & Order | Citation |
|--|-------------------------------|--|
| 15% cap on the number of signatures gathered in a single congressional district | Unconstitutional | MCL 168.471, 168.477, and 168.482(4) as amended by 2018 PA 608 |
| Circulation of petition sheets on a congressional district form | Unconstitutional | MCL 168.482(4) and 168.544d as amended by 2018 PA 608 |
| Disclosure of circulator's paid or volunteer status on petition form | Constitutional | MCL 168.482(7) and 168.482c as amended by 2018 PA 608 |
| Pre-circulation filing of paid circulator's affidavit | Unconstitutional | MCL 168.482a(1) and (2) as amended by 2018 PA 608 |
| Invalidation of petition signatures if circulator provides false or fraudulent information | Constitutional | MCL 168.482a(3) as amended by 2018 PA 608 |
| Invalidation of petition signatures if petition form does not comply with legal requirements | Constitutional | MCL 168.482a(4) as amended by 2018 PA 608 |
| Invalidation of petition signatures that are not signed in the circulator's presence | Constitutional | MCL 168.482a(5) as amended by 2018 PA 608 |
| Optional approval of the content of the petition summary by the Board of State Canvassers | Constitutional | MCL 168.482b(1) as amended by 2018 PA 608 |
| Filing of lawsuit in the Supreme Court to challenge a determination regarding the sufficiency or insufficiency of a petition | Constitutional | MCL 168.479(2) as amended by 2018 PA 608 |
| Mandate to prioritize such lawsuits on the Supreme Court's docket | Unconstitutional | MCL 168.479(2) as amended by 2018 PA 608 |

The instructions provided in this publication are consistent with the Opinion and Order of the Michigan Supreme Court and describe the requirements of Public Act 608 that the Court concluded are constitutional and enforceable.

In its opinion and order, the Michigan Supreme Court concluded that its decision, as it relates to the petition format requirements, would not apply to signatures gathered before January 24, 2022. However, “any signature gathered after January 24, 2022, must be on a petition that conforms to the requirements of MCL 168.482(7).” *League of Women Voters of Michigan v. Secretary of State.*

Therefore, as of January 24, 2022, petition sponsors must ensure that the form of their petition contains the paid circulator check box. Signatures obtained on petition sheets without the check box after January 24, 2022 will be rejected.

Petition sponsors must exercise extreme caution to ensure that all legal requirements are met.

Refer to this [link](#) often; any updates to this publication necessitated will include the date on which the revised instructions became effective.

A. 2022 Filing Deadlines and Signature Requirements

Upcoming deadlines for filing an initiative, referendum, or constitutional amendment petition are listed below, along with the minimum number of valid signatures required for each type of petition. See MCL 168.471; 1963 Constitution Article 2, § 9; 1963 Constitution Art. 12, § 2.

| TYPE OF PETITION | FILING DEADLINE | SIGNATURE REQUIREMENT¹ |
|--|---|--|
| Initiative to create new or amend existing legislation | June 1, 2022 at 5:00 pm | 340,047 |
| Initiative to amend the State Constitution | July 11, 2022 at 5:00 pm | 425,059 |
| Referendum on legislation | 90 th day following the final adjournment of the legislative session at which the law was enacted, ² at 5:00 pm | 212,530 |

Best Practice: Petition sponsors are strongly encouraged to gather and submit a significant number of signatures in excess of the minimum number required, due to the likelihood that some petition signer entries or whole petition sheets may be found invalid during the verification process.

¹ The minimum number of valid signatures required for each petition type is based on the total number of votes cast for all candidates for Governor at the most recent gubernatorial election.

² For legislation enacted in 2020, the filing deadline was March 23, 2021, the 90th day following the final adjournment of the legislature, which occurred on December 23, 2020. See SCR No. 38 (2020).

Please note, petition sponsors may only submit all the signatures intended to be considered for filing once; supplemental signatures are not permitted to be filed after the initial submission. MCL 168.475(2).

B. Consultations Regarding Technical Form Requirements

As a service to those interested in launching an initiative, referendum or constitutional amendment petition drive, the Michigan Department of State's Bureau of Elections offers its staff for consultations on the various petition formatting requirements, provided that the petition sponsor intends to submit the petition to the Board of State Canvassers for approval as to form.

Please note that while staff consultations include a thorough review of whether the petition complies with the technical formatting requirements described below, the following features are *not* subject to staff review and are solely the responsibility of the petition sponsor: the substance of the proposal which appears on the petition, the substance of the summary of the proposal which appears on the signature side of the petition (except as noted below), whether the petition properly identifies provisions of the existing Constitution which may be altered or abrogated by a proposed constitutional amendment, and the manner in which the proposal language is affixed to the petition.

Best Practice: Petition sponsors are urged to confer with their own legal counsel for advice regarding these aspects of their proposal prior to engaging in the consultation process.

Note that under Michigan election law, if a statewide proposal petition does not comply with all the requirements of the Michigan Election Law, signatures submitted on the petition will be considered invalid and not counted. MCL 168.482a(4).

C. Mandatory Pre-Circulation Petition Filing Requirement

Proponents of initiative and constitutional amendment petitions are required to submit a copy of their petition (or amended petition) to the Secretary of State prior to circulating the petition. MCL 168.483a. This requirement applies to every petition to initiate legislation or amend the constitution, even if the sponsor does not intend to submit the petition to the Board of State Canvassers as part of the optional "approval as to form" process (described below). Please note, any changes made to the petition after the initial submission to the Secretary of State must be submitted as an amended petition.

Copies of each initiative, referendum and constitutional amendment petition submitted in accordance with MCL 168.483a will be posted on the Secretary of State's website, www.Michigan.gov/Elections.

Campaign Finance Requirements: State level ballot question committees supporting or opposing a statewide ballot proposal must file a petition proposal campaign statement which is triggered upon the filing of the petition form under section 483a. MCL 169.234. The petition proposal campaign statement is due 35 days after the 483a filing.

FILING INSTRUCTIONS:

1. Submit 15 printer's proof copies of the petition. Materials must be sent to the Secretary of State in care of the Bureau of Elections, Richard H. Austin Building, 430 West Allegan Street, 1st Floor, Lansing, Michigan 48918. This address may be used for hand delivery, overnight delivery, or U.S. Mail.
2. Email an electronically generated pdf of the petition to Elections@Michigan.gov. In the subject line of the email message, please indicate, "483a – Petition Attached."

Best Practice: Petition sponsors should ask the printer of the petition to sign the attached Printer's Affidavit in the presence of a notary public and retain a copy as evidence of compliance with the type size and text requirements of the Michigan Election Law.

D. Optional Pre-Circulation Process for "Approval of the Content of the Petition Summary"

The sponsor may submit the summary of the purpose of the petition to the Board of State Canvassers for approval of the content of the summary, using the procedure described in this section. MCL 168.482b. If the sponsor avails itself of this optional process, a summary of the proposal's purpose stated in not more than 100 words must be prepared by the Director of Elections; the summary will consist of a true and impartial statement in language that does not create prejudice for or against the proposal. MCL 168.482b(2). The summary must also inform signers of the subject matter of the petition but need not be legally precise, and must use words having a common, everyday meaning to the general public. Id.

The summary prepared by the Director of Elections will be presented to the Board of State Canvassers at an open meeting; the Board must approve or reject the content of the summary *within 30 days of its submission* by the petition sponsor. MCL 168.482b(1).

If the Board of State Canvassers approves the summary as prepared by the Director of Elections, the sponsor must print the full text of the approved summary in the heading of the petition and the Board will be barred from considering a subsequent challenge alleging that the summary is misleading or deceptive. Id.

Additionally, note that the Director of Elections and Board of State Canvassers are authorized to draft and approve *ballot language* that differs from the *petition summary* adopted under this procedure. Op Atty Gen No 7310 (May 22, 2019).

Best Practice: Note that due to the legal requirement that the petition sponsor must print the approved petition summary in the heading of the petition and the possibility that the Director of Elections' proposed summary may be modified during the Board meeting, it may not be possible for the petition sponsor to simultaneously obtain "approval of the content of the petition summary" and "approval as to form" at the same Board meeting. Sponsors must plan accordingly.

FILING INSTRUCTIONS:

1. Submit the full text of the statewide proposal with a cover letter clearly stating that the petition sponsor is seeking the approval of the content of the petition summary. If the proposal will be presented as a constitutional amendment, the submission must include sections of the existing constitution which would be altered or abrogated by the proposal if adopted. Note that the request for approval of the content of the summary must be made before the petition is printed for circulation. Materials must be mailed, hand delivered, or sent via overnight delivery to the Secretary of State in care of the Bureau of Elections, Richard H. Austin Building, 430 West Allegan Street, 1st Floor, Lansing, Michigan 48918.
2. The sponsor may provide with its submission its own preferred language for the summary of the petition, but the Director of Elections and Board of State Canvassers are not obligated to approve the sponsor's summary.

E. Optional Pre-Circulation "Approval as To Form" Process

Sponsors of petitions to initiate legislation, amend the constitution, or invoke the right of referendum are urged to submit a proof copy of the petition to the Board of State Canvassers for approval as to form prior to the circulation of the petition.

Best Practice: Although Michigan election law does not require the sponsor of a statewide proposal petition to seek pre-approval of the petition form, such approval greatly reduces the risk that signatures collected on the form will be ruled invalid due to formatting defects.

Upon determining through the staff consultation process that an initiative or referendum petition is properly formatted, it is submitted to the Board of State Canvassers for approval as to form. The Board's approval process does *not* include a review of the language of the proposed initiated law, constitutional amendment or referendum, the manner in which the proposal language is affixed to the petition, or consideration of whether the petition properly identifies provisions of the existing Constitution which may be altered or abrogated by a proposed constitutional amendment. Furthermore, the Board's approval as to form does *not* include a review of the substance of the summary of the proposal, unless the sponsor avails itself of the optional process for approving the content of the petition summary (described above).

Please note, staff consultations regarding compliance with the technical formatting requirements are only available to petition sponsors who intend to participate in this optional approval as to form process. The time it takes to complete the consultation process will vary depending on the type of petition and complexity of the proposal; sponsors should plan accordingly.

Further, any changes made to the petition after it has been approved as to form by the Board of State Canvassers must be submitted as an amended petition with a newly executed Printer's Affidavit.

FILING INSTRUCTIONS:

1. Complete and sign the attached PRINTER'S AFFIDAVIT in the presence of a notary public and attach 15 proof copies of the petition. Materials must be sent to the Board of State Canvassers in care of the Bureau of Elections, Richard H. Austin Building, 430 West Allegan Street, 1st Floor, Lansing, Michigan 48918. This address may be used for hand delivery, overnight delivery, or U.S. Mail.
2. Email a pdf of the petition to Elections@Michigan.gov. In the subject line of the email message, please indicate, "BSC – Petition Attached."
3. File final proof copies of petition sheets to be circulated, reflecting all necessary changes identified through the staff consultation process, at least 48 hours prior to the Board of State Canvassers meeting at which the petition is scheduled to be considered. If the petition sponsor fails to timely file all the required materials, the petition will not be placed on the meeting agenda.

F. Circulation on a Countywide Form or City/Township Form

Petitions proposing an initiated law, constitutional amendment or referendum of legislation may be circulated on a countywide or city/township form. Op Atty Gen No 7310 (May 22, 2019). (Note, Public Act 608's requirement that statewide proposal petitions be circulated on a congressional district form was found by the Court of Appeals to be unconstitutional. *Id.*)

Best Practice: Petition sponsors are strongly encouraged to check the registration status, address, and city or township of registration of petition signers against the Qualified Voter File (QVF) prior to filing. Any petition signer entries found by the sponsor to be invalid may be crossed out with a line prior to filing.

To obtain a copy of the QVF, follow the instructions on the [Qualified Voter File Data Request Form](#).

G. Circulation Period

Michigan election law states, "The signature on a petition that proposes an amendment to the constitution or to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state." MCL 168.472a.

A referendum petition is not subject to the 180-day limitation of MCL 168.472a and can be circulated from the date the legislation is enacted into law until the filing deadline imposed under 1963 Constitution, art. 2, § 9 (90 days following the final adjournment of the legislative session at which the law was enacted).

H. Law Regarding Non-Resident Petition Circulators

Michigan election law authorizes the sponsors of statewide ballot proposals to utilize petition circulators who are not Michigan residents, provided that the nonresident circulators agree to accept the jurisdiction of the State of Michigan and service of

process upon the Secretary of State or her designated agent. A nonresident circulator must make a cross or check mark in the box provided on the petition sheet agreeing to these terms, "otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official." MCL 168.544c(1). The format of the circulator's certificate is described in Section II below.

I. Invalidation of Signatures if Circulator Provides False or Fraudulent Information

Under MCL 168.482a(3), (5):

If the circulator of a petition under section 482 provides or uses a false address or provides any fraudulent information on the certificate of circulator, any signature obtained by that circulator on that petition is invalid and must not be counted.

* * *

Any signature obtained on a petition under section 482 that was not signed in the circulator's presence is invalid and must not be counted.

J. Prohibited Conduct

Under MCL 168.482e(1)-(2), it is a misdemeanor for an individual to sign a petition with a name other than his or her own; make a false statement in a certificate on a petition; sign a petition as a circulator if the individual did not circulate the petition; or sign a name as circulator with a name other than his or her own. Additionally, individuals are prohibited from signing a petition with multiple names. MCL 168.482e(3).

In addition, if an individual signs a petition in violation of the above, any signature by that individual on the petition is invalid and will not be counted. MCL 168.482e(4).

K. Filing, Canvass and Disposition of Proposal

FILING OF PETITION: Initiative, referendum and constitutional amendment petitions must be filed with the Secretary of State. MCL 168.471. Upon receipt of the filing, the Secretary of State must provide notice to the Board of State Canvassers immediately. MCL 168.475(1).

CANVASS OF PETITION: "Upon receiving notification of the filing of the petitions, the Board of State Canvassers shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors." MCL 168.476(1).

VALIDATION OF SIGNATURES BY RANDOM SAMPLING, CHALLENGE

PROCEDURE: The Board of State Canvassers uses a random sampling process to determine whether initiative, referendum, and constitutional amendment petitions contain enough valid signatures to warrant certification. The random sampling process yields two important results: A projection of the number of valid signatures in the entire filing, and the probability that the sample result accurately determined whether the petition contains a sufficient number of valid signatures (known as the confidence level).

There are two different random sampling options: (1) A single-stage process whereby a relatively large sample is taken (usually 3,000 to 4,000 signatures depending on the percentage of signatures which must be valid in order for the petition to qualify); or (2) A two-stage process where a much smaller sample is drawn (approximately 500 signatures), and the result determines (a) whether there is a sufficient level of confidence to immediately recommend certification or the denial of certification, or (b) if the result indicates a “close call,” a second random sample must be taken (usually 3,000 to 4,000 signatures) to provide a definitive result with the maximum confidence level that can be obtained.

Under the Board’s established procedures, staff reviews the entire petition filing sheet-by-sheet so that wholly invalid petition sheets can be identified, culled, and excluded from the “universe” of potentially valid signatures from which the random sample is drawn. The total number of potentially valid signatures from the universe is entered into a computer program along with the minimum number of signatures required, the total number of petition sheets in the universe, and the number of signature lines per sheet. The program generates a list of signatures (identified by page and line number) that comprise the random sample.

Copies of signatures selected for the random sample are made available for purchase to petition sponsors, challengers, and the general public. The deadline for challenging signatures sampled from an initiative, constitutional amendment, or referendum petition elapses at 5:00 p.m. on the 10th business day after copies of the sampled signatures are made available to the public. Challenges must identify the page and line number of each challenged signature and describe the basis for the challenge (i.e., signer not registered to vote; signer omitted signature, address, or date of signing; circulator omitted signature, address, or date of signing; etc.). A challenge alleging that the form of the petition does not comply with all legal requirements must describe the alleged defect.

After the random sample is canvassed and any challenges are addressed, a staff report is prepared and released to the public at least two business days before the Board of State Canvassers meets to make a final determination regarding the sufficiency of a petition. The staff report includes an assessment of any challenges and estimate of the total number of valid signatures contained in the filing based on the validity rate.

INITIATIVE TO CREATE NEW OR AMEND EXISTING LEGISLATION: The Board of State Canvassers is required to “make an official declaration of the sufficiency or insufficiency of an initiative petition no later than 100 days^[3] before the election at which the proposal is to be submitted.” MCL 168.477(1). If the Board of State Canvassers determines that the petition contains enough valid signatures, the state legislature has 40 session days to adopt or reject the proposal; the legislature’s failure to enact the proposed initiated law results in the proposal’s placement on the ballot at the next statewide general election. Article 2, § 9 further provides: “The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject ... and in such event both measures shall be submitted ... to the electors for approval or rejection at the next general election.”

³ In 2022, this deadline elapses on Sunday, July 31, 2022.

If a majority of the votes cast are in favor of the proposed initiated law and/or any alternative proposal placed on the ballot by the legislature, the measure goes into effect. The Michigan Constitution states: "If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail." 1963 Const, art 2, § 9. Initiated laws become effective ten days after the date the Board of State Canvassers certifies the official election results. Id.

INITIATIVE TO AMEND THE STATE CONSTITUTION: The Board of State Canvassers must make an official determination regarding the sufficiency or insufficiency of a petition to amend the Michigan Constitution "at least 2 months⁴ before the election at which the proposal is to be submitted." MCL 168.477. If the petition is determined by the Board of State Canvassers to contain enough valid signatures, the proposed amendment is placed on ballot at the next statewide general election. 1963 Const art 12, § 2. If approved by a majority of voters voting on the question, the proposed constitutional amendment goes into effect 45 days following the date of the election at which it was approved. Id.

REFERENDUM ON LEGISLATION: The Board of State Canvassers is required to "complete the canvass of a referendum petition within 60 days after the petition is filed with the Secretary of State, except that 1 15-day extension may be granted by the Secretary of State if necessary to complete the canvass." MCL 168.477(2). If the petition contains enough valid signatures as determined by the Board of State Canvassers, the implementation of the law involved is suspended pending the placement of the law on the ballot at the next statewide general election; a majority vote determines whether the law goes into effect. 1963 Const art 2, § 9, MCL 168.477(2).

⁴ In 2022, this deadline elapses on Friday, September 9, 2022.

SECTION II: PETITION FORMAT REQUIREMENTS

Important Note: Legislative changes enacted in late 2018 and subsequent legal developments altered the process for preparing and circulating statewide ballot proposal petitions. Among other changes, [Public Act 608 of 2018](#) modified the petition format and signature gathering process; a subsequent order by the Michigan Supreme Court concluded that many of Public Act 608's provisions were unconstitutional.

A summary of the legislative changes and the Court's opinion and order regarding their enforceability follows:

| Proposed Requirement | Supreme Court's Opinion & Order | Citation |
|--|---------------------------------|--|
| 15% cap on the number of signatures gathered in a single congressional district | Unconstitutional | MCL 168.471, 168.477, and 168.482(4) as amended by 2018 PA 608 |
| Circulation of petition sheets on a congressional district form | Unconstitutional | MCL 168.482(4) and 168.544d as amended by 2018 PA 608 |
| Disclosure of circulator's paid or volunteer status on petition form | Constitutional | MCL 168.482(7) and 168.482c as amended by 2018 PA 608 |
| Pre-circulation filing of paid circulator's affidavit | Unconstitutional | MCL 168.482a(1) and (2) as amended by 2018 PA 608 |
| Invalidation of petition signatures if circulator provides false or fraudulent information | Constitutional | MCL 168.482a(3) as amended by 2018 PA 608 |
| Invalidation of petition signatures if petition form does not comply with legal requirements | Constitutional | MCL 168.482a(4) as amended by 2018 PA 608 |
| Invalidation of petition signatures that are not signed in the circulator's presence | Constitutional | MCL 168.482a(5) as amended by 2018 PA 608 |
| Optional approval of the content of the petition summary by the Board of State Canvassers | Constitutional | MCL 168.482b(1) as amended by 2018 PA 608 |
| Filing of lawsuit in the Supreme Court to challenge a determination regarding the sufficiency or insufficiency of a petition | Constitutional | MCL 168.479(2) as amended by 2018 PA 608 |
| Mandate to prioritize such lawsuits on the Supreme Court's docket | Unconstitutional | MCL 168.479(2) as amended by 2018 PA 608 |

The instructions provided in this publication are consistent with the [Opinion and Order](#) of the Michigan Supreme Court and describes the requirements of Public Act 608 that the Court concluded are constitutional and enforceable.

In its opinion and order, the Michigan Supreme Court concluded that its decision, as it relates to the petition format requirements, would not apply to signatures gathered before January 24, 2022. However, “any signature gathered after January 24, 2022, must be on a petition that conforms to the requirements of MCL 168.482(7).” *League of Women Voters of Michigan v. Secretary of State.*

Therefore, as of January 24, 2022, petition sponsors must ensure that the form of their petition contains the paid circulator check box. Signatures obtained on petition sheets without the check box after January 24, 2022, will be rejected.

Petition sponsors must exercise extreme caution to ensure that all legal requirements are met.

Refer to this [link](#) often; any updates to this publication necessitated by pending litigation will include the date on which the revised instructions became effective.

A. Sheet Size

The size of the petition sheet must be 8½ by 14 inches. MCL 168.482(1). The petition format must be arranged horizontally (i.e., in landscape layout) on the sheet.

If the full text of the constitutional amendment, legislative proposal or legislation being subjected to a referendum is too lengthy to be printed on the reverse side of the petition sheet, the language of the petition must be continued on a fold over extension on the same sheet of paper, like a map. This is frequently referred to as a “bedsheet petition.” The fold over extension must be attached to the sheet at all times from the time the petition is placed into circulation through the time of filing. With the extension folded down and the signature side facing up, the petition must measure 8 ½ inches by 14 inches in size.

The following examples depict methods for folding maps and can be used as a guide for folding “bedsheet petitions” to comply with the legal-size paper requirement. The blank part of the map represents the signature side of the petition that will lie face-up after folding.



B. NEW: Circulator Payment Status Checkbox

A new check box must appear at the top of the petition sheet indicating whether the circulator of the petition is a paid signature gatherer or a volunteer signature gatherer. The statement must be printed in 12-point type on the signature side of the petition sheet: Recommended language is as follows:

The circulator of this petition is a (mark one): paid signature gatherer volunteer signature gatherer.

MCL 168.482(7).

C. Circulator Compliance Statement

A new circulator compliance statement must appear at the top of the petition sheet. The statement must be printed in 12-point type on the signature side of the petition sheet:

If the petition circulator does not comply with all of the requirements of the Michigan election law for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted.

MCL 168.482(8).

D. Identification of Petition Type

One of the following phrases must be printed in capital letters in 14-point boldface type in the heading of each part of the petition (which includes the signature side of the sheet and if applicable, the reverse side):

**INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION**

or

INITIATION OF LEGISLATION

or

**REFERENDUM OF LEGISLATION
PROPOSED BY INITIATIVE PETITION**

MCL 168.482(2).

E. Petition Summary

A summary of the purpose of the proposal must be printed in 12-point type following the identification of the petition type. MCL 168.482(3). This summary must describe the proposal's purpose and cannot exceed 100 words in length. Id.

If preparing a multi-page petition, reprint the summary of the proposal's purpose in 12-point type on the reverse side of the petition sheet, below the identification of petition type.

F. Presentation of Proposal

The full text of the proposal must be presented in 8-point type as described below. MCL 168.482(3).

1. **For a petition that fits on a single-sided 8½ by 14-inch page, print the full text of the proposal following the summary:** The full text of the proposed initiated law, constitutional amendment, or legislation to be referred must follow the summary and be printed in 8-point type. MCL 168.482(3). For multi-page petitions, see below.
2. **For a multi-page petition, add an instruction for signers to refer to reverse side:** For petitions that require two or more pages, signers must be instructed to refer to the reverse side for the full text of the proposal; this instruction is provided following the summary. The full text of the proposal may be presented in single or dual column format only. Examples include but are not limited to those shown below:

| INITIATIVE PETITION EXAMPLES |
|--|
| <p>For the full text of [the law to be amended], see the reverse side of this petition.</p> <p style="text-align: center;"><i>[Include the Public Act number, Michigan Compiled Laws citation and title of the law to be amended.]</i></p> |
| <p>For the full text of [the new act], see the reverse side of this petition.</p> <p style="text-align: center;"><i>[Include the title of the law to be enacted.]</i></p> |

| CONSTITUTIONAL AMENDMENT PETITION EXAMPLES |
|---|
| <p>For the full text of proposed [the constitutional provision to be created], see the reverse side of this petition.</p> <p style="text-align: center;"><i>[Include the new article and section number for the section to be created.]</i></p> |
| <p>For the full text of proposed [the constitutional provision to be amended], see the reverse side of this petition.</p> <p style="text-align: center;"><i>[Include the article and section numbers of the provision to be amended.]</i></p> |
| <p>The full text of the proposal appears on the reverse side of this petition, along with provisions of the existing constitution which would be altered or abrogated if the proposal is adopted.</p> |

| REFERENDUM PETITION EXAMPLES |
|---|
| <p>For the full text of [the law to be referred], see the reverse side of this petition.</p> <p><i>[Include the Public Act number and Michigan Compiled Laws citation of the law to be referred.]</i></p> |
| <p>The full text of the legislation to be referred appears on the reverse side of this petition.</p> |

3. **Instructions applicable to initiative petitions only: Include the title of the law to be amended, its Public Act number, and the Michigan Compiled Laws citation(s) for the statute(s) to be amended.** This information must be printed in 8-point type on the signature side of the petition sheet and on the reverse side (if applicable), after the summary. 1963 Const art 4, § 24. In addition, the preface of the full text of the proposal must include the phrase, “The People of the State of Michigan enact:”. 1963 Const art 4, § 23.
4. **Instructions applicable to constitutional amendment petitions only: Identify and republish the provision(s) of the Michigan Constitution that would be altered or abrogated by the proposal if adopted.** A petition proposing a constitutional amendment is required to include additional language if it “alters” or “abrogates” an existing provision of the constitution. MCL 168.482(3). The words, “Provisions of existing constitution altered or abrogated by the proposal if adopted” must be printed in 8-point type preceding the identification/citation of the provision(s) that would be so affected if the proposal is adopted. Id. Additionally, the full text of the provision(s) which would be altered or abrogated must be republished at length. Art. XII, Sec. 2, MCL 168.482(3).

A proposal is said to “alter” an existing provision only when the amendment would add to, delete from, or change the existing wording of a provision of the Michigan Constitution. A proposed amendment would “abrogate” (eliminate) an existing provision if it would: first, render that provision or some discrete component of it wholly inoperative, a nullity; or second, become impossible for the proposed amendment to be harmonized with an existing provision of the Michigan Constitution when the proposed amendment and existing provision are read together.

Best Practice: Sponsors of petitions to amend the Michigan Constitution are strongly encouraged to seek legal advice for assistance in determining whether the identification and republication requirement applies to their proposals.

- A. For a constitutional amendment petition that fits on a single-sided 8½ by 14-inch page, print the following in 8-point type after the summary: the full text of the proposed amendment, and if applicable, the “Provisions of existing constitution ...” clause with the full text of the provision(s) to be altered or abrogated by the proposal if adopted.
- B. For a multi-page constitutional amendment petition, do all the following:

1. On the signature side of the sheet, beneath the summary, print in 8-point type the “Provisions of existing constitution ...” clause, and a statement instructing the signer to refer to the reverse side of the petition for the full text of the proposal and provisions of the existing constitution which would be altered or abrogated if it is adopted; and
2. On the reverse side of the sheet, beneath the identification of petition type, print the summary in 12-point type, the full text of the proposed constitutional amendment in 8-point type, the “Provisions of existing constitution ...” clause in 8-point type, and republish the full text of the provisions that would be altered or abrogated by the proposal if adopted in 8-point type.

5. **Instructions applicable to referendum petitions only: The petition must include the Public Act number and full text of the law to be referred.** A petition to invoke the right of referendum must identify the legislation that is the subject of the referendum vote by its Public Act number. In addition, the full text of the law that is the subject of the petition must be printed in 8-point type.

G. Identification of County or City/Township of Circulation

A petition to initiate legislation, refer legislation, or amend the Michigan Constitution may be circulated on a countywide or city/township form. Op Atty Gen No. 7310 (May 22, 2019). The following statement is printed immediately above the warning to petition signers (see below).

If circulating on a **countywide** form, the signature side of the petition must include the following statement in 8-point type:

We, the undersigned qualified and registered electors, residents in the county of _____, state of Michigan, respectively petition for (amendment to constitution) (initiation of legislation) (referendum of legislation).

If circulating on a **city/township** form, the signature side of the petition must include the following statement in 8-point type:

We, the undersigned qualified and registered electors, residents in the city _____ (Strike one) township _____ of _____, state of Michigan, respectively petition for (amendment to constitution) (initiation of legislation) (referendum of legislation).

Op Atty Gen No 7310 (May 22, 2019). Also note that under MCL 168.552a(1), “[n]otwithstanding any other provision of this act to the contrary, a petition or a signature is not invalid solely because the designation of city or township has not been made on the petition form if a city and an adjoining township have the same name.”

H. Warning to Petition Signers

A warning to the signers of the petition must be printed in 12-point boldface type, immediately above the signature lines. MCL 168.482(5).

WARNING – A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

I. Entry Spaces for Petition Signers

On **countywide** petition forms, the entry spaces for signers must be presented in 8-point type as shown below:

| SIGNATURE | PRINTED NAME | STREET ADDRESS OR RURAL ROUTE | CITY OR TOWNSHIP | ZIP CODE | DATE OF SIGNING | | |
|-----------|--------------|-------------------------------|------------------|----------|-----------------|-----|------|
| | | | | | MO | DAY | YEAR |
| 1. | | | | | | | |
| 2. | | | | | | | |

MCL 168.482(6); MCL 168.544c(1)-(2). Also note that under MCL 168.552a(2), “Notwithstanding any other provision of this act to the contrary, if a person who signs a petition uses his or her mailing address on the petition and that mailing address incorporates the political jurisdiction in which the person is registered to vote, that signature shall be counted if the signature is otherwise determined to be genuine and valid under this act.”

On **city/township** petition forms, the entry spaces for signers must be presented in 8-point type as shown below:

| SIGNATURE | PRINTED NAME | STREET ADDRESS OR RURAL ROUTE | ZIP CODE | DATE OF SIGNING | | |
|-----------|--------------|-------------------------------|----------|-----------------|-----|------|
| | | | | MO | DAY | YEAR |
| 1. | | | | | | |
| 2. | | | | | | |

The minimum number of signature lines is five (5) and the maximum number is fifteen (15). As any reduction in the number of *lines* provided for signers increases the number of *petition sheets* needed to satisfy the signature requirement, a minimum of five (5) lines is necessary to assure that the increased volume of petition sheets is not so great as to impede or delay the processing procedure.

J. Certificate of Circulator

The following statement shall be printed in 8-point type in the lower left-hand corner of the petition sheet. MCL 168.482(6); MCL 168.544c(1).

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township indicated preceding the signature, and the elector was qualified to sign the petition.

If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

Best Practice: It is recommended that the check box be printed in boldface type to minimize the likelihood that an out-of-state circulator may inadvertently fail to make the selection.

K. Warning to Circulator

A warning to the circulators of the petition must be printed in 12-point boldface type as specified below. MCL 168.482(6); MCL 168.544c(1). The warning must be placed in the lower left-hand corner of the sheet immediately beneath the circulator's statement.

WARNING - A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.

L. Instruction to Circulator and Space for Circulator's Signature and Residence Address

In the lower right-hand corner of the petition sheet, the following circulator instruction must be printed in 12-point boldface type:

CIRCULATOR - Do not sign or date certificate until after circulating petition.

MCL 168.482(6); MCL 168.544c(1)-(2). Immediately beneath this instruction, the entry space for the petition circulator must be presented in 8-point type as shown below:

_____/_____/_____
 (Signature of Circulator) (Date)

 (Printed Name of Circulator)

 Complete Residence Address (Street and Number or Rural Route) [Do Not Enter a Post Office Box]

 (City or Township, State, Zip Code)

 (County of Registration, If Registered to Vote, of a Circulator who is not a Resident of Michigan)

M. Identification of Petition Sponsor

The petition sheet must include, in 8-point type, the name and address of the person, group or organization paying for the printing of the petition form, preceded by the words: "Paid for with regulated funds by _____." MCL 169.247.

N. Extension for Instructional or Promotional Language

During the circulation period, the petition may contain a detachable extension for optional instructional or promotional language. The extended portion of the sheet must be detached or otherwise removed prior to the filing of the petition. If a detachable stub or other type of petition sheet extension is used, the sponsor of the petition is solely responsible for the accuracy of the instructional and/or promotional language placed on the extension.

O. Clarification of Constitutional Amendment, Initiated Legislation or Referendum of Legislation

Best Practice: For ease of readability, sponsors are encouraged to follow the ~~strike~~/CAPS format for presenting amendatory language. For example, if the petition offers a constitutional amendment which involves alterations to existing provisions of the State Constitution, the alterations may be presented by showing any language that would be added to the provision or provisions in capital letters and any language that would be deleted from the provision or provisions struck out with a line.

If the petition offers a legislative proposal or a referendum of legislation which involves alterations to existing provisions of Michigan law, the alterations may be presented by showing any language that would be added to the provision or provisions in capital letters and any language that would be deleted from the provision or provisions struck out with a line.

P. Type Size and Font

The statutes that govern the form of the petition mandate the use of specific type sizes. The *font* size indicated in some software programs does not always measure the same *type* size. Petition sponsors and printers must exercise caution to ensure that the printed type measures the type size required by law.

Best Practice: Petition sponsors are strongly encouraged to utilize a sans serif font for readability purposes. Examples of such fonts are provided below.

Arial (14-point type)
Microsoft Sans Serif (14-point type)
Tahoma (14-point type)
Verdana (14-point type)

SECTION III. FILING INSTRUCTIONS FOR INITIATIVE, CONSTITUTIONAL AMENDMENT AND REFERENDUM PETITIONS

Filing Location

Statewide initiative, constitutional amendment and referendum petitions are filed with the Michigan Department of State's Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sponsors must contact the Bureau of Elections at 517-335-3234 to plan for the submission of the petition well in advance of the applicable filing deadline.

At the time of filing, sponsors will be asked to provide the estimated number of petition sheets and signatures submitted. Please refer to the [Petition Signature Guidance](#) publication for additional information.

Questions?

If you have any questions, please contact the Michigan Department of State, Bureau of Elections at:

Mailing Address: P.O. Box 20126, Lansing, MI 48901-0726

Address for Overnight or Hand Delivery: Richard H. Austin Bldg., 430 W. Allegan, 1st Floor, Lansing, MI 48933

Phone: (517) 335-3234

Web: www.Michigan.gov/Elections

Email: Elections@Michigan.gov

INSTRUCTIONS: Use this form for the initial filing of a petition with the Board of State Canvassers or when filing an amended petition with the Board of State Canvassers for approval as to form.

RECEIVED by MSC 9/6/2022 4:22:14 PM

PRINTER'S AFFIDAVIT (2021-2022)

I, _____, being duly sworn, depose and say:

- 1. That I prepared the attached petition proof.
- 2. That the size of the petition is 8.5 inches by 14 inches.
- 3. That the circulator compliance statement ("If the circulator of this petition does not comply . . .") is printed in 12-point type.
- 4. That the heading of the petition is presented in the following form and printed in capital letters in 14-point boldface type:

**INITIATIVE PETITION
 AMENDMENT TO THE CONSTITUTION
 or
 INITIATION OF LEGISLATION
 or
 REFERENDUM OF LEGISLATION
 PROPOSED BY INITIATIVE PETITION**

- 5. That the summary of the purpose of the proposal is printed in 12-point type and does not exceed 100 words in length.
- 6. That the words, "We, the undersigned qualified and registered electors . . ." are printed in 8-point type.
- 7. That the two warning statements and language contained therein are printed in 12-point boldface type.
- 8. That the words, "CIRCULATOR – Do not sign or date . . ." are printed in 12-point boldface type.
- 9. That the balance of the petition is printed in 8-point type.
- 10. That the font used on the petition is _____.
- 11. That to the best of my knowledge and belief, the petition conforms to the petition form standards prescribed by Michigan Election Law.

Printer's Signature

Name of Sponsor of Proposal

Subscribed and sworn to (or affirmed) before me on this ___ day of _____, 20__.

Signature of Notary Public

Printed Name of Notary Public

Notary Public, State of Michigan, County of _____.

Acting in the County of _____ (where required).

My commission expires _____.



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

January 2022

**INITIATIVE, REFERENDUM AND
CONSTITUTIONAL AMENDMENT PETITIONS**

**COUNTYWIDE PETITION FORM
PRESCRIBED FORMAT**

Public Act 608 of 2018 eliminated the option for the sponsors of statewide ballot proposals to print and circulate countywide petition forms, and instead required the sponsors to use petition sheets circulated within a single congressional district. However, in *League of Women Voters v. Secretary of State*, the Michigan Supreme Court concluded that the elimination of the countywide petition form was unconstitutional and unenforceable, and that petition sponsors could choose whether to circulate petition sheets on a countywide or city/township basis.

The Michigan Election Law provides, “Petitions circulated countywide must be on a form prescribed by the secretary of state, which form must be substantially as provided in sections 482, 544a, or 544c, whichever is applicable.” MCL 168.544d. Therefore, pursuant to my authority under MCL 168.544d to prescribe the format of a countywide petition form for initiative, referendum, and constitutional amendment petitions, I designate the following petition format as substantially compliant with the requirements of MCL 168.482:

- The format of the petition sheet must be arranged horizontally.
- If the full text of the constitutional amendment, legislative initiative or legislation being subjected to a referendum is too lengthy to be printed on a single petition sheet, the language of the proposal must be continued on a fold over extension on the same sheet of paper.
- If preparing a multi-page petition, the summary of the proposal’s purpose must be reprinted in 12-point type on the reverse side of the petition sheet below the identification of petition type. Additionally, the signature side of the petition sheet must include an instruction for signers to refer to the reverse side for the full text of the proposal; this instruction is provided following the summary.
- The entry spaces for the signers of countywide petitions must be presented as shown below:

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- The minimum number of signature lines is five (5) and the maximum number is fifteen (15).
- The petition may contain an extension for the presentation of instructional or promotional language, but the extended portion of the sheet must be detached or otherwise removed prior to the filing of the petition.



Jocelyn Benson
 Jocelyn Benson
 Secretary of State

EXHIBIT 6

BOARD OF STATE CANVASSERS MEETING

August 31, 2022

Prepared by



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STATE OF MICHIGAN
DEPARTMENT OF STATE

JOCELYN BENSON, SECRETARY OF STATE

BOARD OF STATE CANVASSERS MEETING

201 Townsend Street, Lansing, Michigan

Wednesday, August 31, 2022, 9:00 a.m.

BOARD: MR. ANTHONY DAUNT - Chair
MS. MARY ELLEN GUREWITZ - Vice Chair
MR. RICHARD HOUSKAMP - Board Member
MS. JEANNETTE BRADSHAW - Board Member
MR. JONATHAN BRATER - Elections Staff
MR. ADAM FRACASSI - Elections Staff

APPEARANCES:

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22
23
24
25

TABLE OF CONTENTS

PAGE

1. Public Comment

1. Jimmy Sam Woodard 9

2. Matthew Shepard 12

3. Jeanette Wareham. 13

4. Larry Hutchinson. 15

5. James Gallant 17

6. Gary Donker 19

7. Patrice Johnson 21

8. Donna Brandenburg 23

9. Sandra Carolan. 26

10. Holly Grandy. 28

11. Linda Appling 30

12. James Johnson 31

13. Dawn Udell. 32

14. Ellen Koenig. 33

15. Mark Hornbeck 34

16. Melissa Ward. 36

17. Craig Cumbow. 39

18. Dan Bonamie, II 40

19. Eddie Kabacinski. 43

20. Gary Smith. 44

21. Frederick Nienstedt 45

| | | |
|----|-----------------------------------|----|
| 1 | 22. Robert Avers. | 47 |
| 2 | 23. Renee Jasinski. | 50 |
| 3 | 24. Nicole Kauffman | 50 |
| 4 | 25. Grace Kauffman. | 51 |
| 5 | 26. Peter Dresser | 52 |
| 6 | 27. Corey Shankleton. | 53 |
| 7 | 28. Lori Malackowski. | 55 |
| 8 | 29. Rick Warzywak | 56 |
| 9 | 30. Christine Augustine | 57 |
| 10 | 31. Ari Kauffman. | 59 |
| 11 | 32. Trisha Fessler. | 60 |
| 12 | 33. German Barbe. | 61 |
| 13 | 34. Victoria Zilch. | 62 |
| 14 | 35. Dr. Heather Aldred. | 64 |
| 15 | 36. Cydney Domsic | 66 |
| 16 | 37. Jan Seeger. | 67 |
| 17 | 38. Regena Schuck | 68 |
| 18 | 39. Jessica Frost, M.D. | 70 |
| 19 | 40. Leah Riley. | 72 |
| 20 | 41. Cassy Jones McBryde | 73 |
| 21 | 42. Billy Putman. | 75 |
| 22 | 43. Lisa Capatina | 78 |
| 23 | 44. Gregory Goyert, M.D. | 80 |
| 24 | 45. Judi Suess, M.D. | 82 |
| 25 | 46. Mandy Sullivan. | 83 |

| | | |
|----|---|----------|
| 1 | 47. Lynn Mills | 84 |
| 2 | 48. Sandra Carolan | 85 |
| 3 | 49. Lisa Werner | 88 |
| 4 | 50. Michelle Zukowski Serlin | 89 |
| 5 | 51. Michele Pfister | 91 |
| 6 | 52. Jerron Totten | 93 |
| 7 | 53. Tracy Pease | 95 |
| 8 | 54. Dr. Mark Gurley | 97 |
| 9 | 55. Kermit Williams | 98 |
| 10 | 56. Hima Kolanagireddy | 100 |
| 11 | 57. Denise Smith | 102 |
| 12 | 58. Patricia Danks, Ph.D. | 105 |
| 13 | 59. April Snyder | 108 |
| 14 | 60. Kim Peters | 109 |
| 15 | 61. Aaron Martinez | 111 |
| 16 | 62. Sharon Williams | 113 |
| 17 | 63. Madison Jajuga | 116 |
| 18 | 2. Consideration of meeting minutes for approval August 19, 2022 | 119 |
| 19 | | |
| 20 | 3. Certification of the Recount for the Office of State Representative, 34th District | 119 |
| 21 | 1. Eric Doster | 126 |
| 22 | 4. Consideration of the sufficiency of the initiative petition submitted by Promote the Vote 2022 | 130 |
| 23 | | |
| 24 | 1. Jonathan Koch | 137, 176 |
| 25 | 2. Chris Trebilcock | 154, 177 |

1 5. Assignment of the number designation for the
2 constitutional amendment sponsored by Promote
the Vote 2022 185

3 6. Consideration of the 100-word summary of purpose
4 for the constitutional amendment sponsored by
Promote the Vote 2022 187

5 1. Chris Trebilcock 193

6 7. Consideration of the sufficiency of the
7 initiative petition submitted by Reproductive
Freedom for All 208

8 1. Eric Doster. 213, 249

9 2. Olivia Flower. 227

10 3. Steven Liedel. 230

11 8. Assignment of the number designation for the
12 constitutional amendment sponsored by
Reproductive Freedom for All. 253

13 9. Consideration of the 100-word summary of purpose
14 for the constitutional amendment sponsored by
Reproductive Freedom for All. 254

15 1. Eric Doster. 257, 263

16 2. Steven Liedel. 259

17 10. Any other business properly submitted to the
18 Board 274

19

20

21

22

23

24

25

1 Lansing, Michigan

2 Wednesday, August 31, 2022 - 9:05 a.m.

3 MR. DAUNT: I call this meeting to order at 9:05
4 in the morning. Thank you, everybody, for being here.
5 Please bear with me. It's my first real running of a
6 meeting as chair. I unfortunately missed the last one which
7 would have been a nice dry run with a little less
8 controversial material to deal with. But we'll start things
9 off. Mr. Brater, was -- was this meeting properly noticed
10 under the Open Meetings Act?

11 MR. BRATER: Yes, Chair Daunt. It was.

12 MR. DAUNT: Okay. Thank you, sir. I guess a
13 little housekeeping before we get going on this. I'll
14 probably put the gavel down. We're going to start off with
15 public comment on -- on this is- -- on these issues and
16 there have been white cards for the public to speak. We're
17 going to take them -- I'm going to try in some semblance of
18 order of the issues, but please forgive if we're bouncing
19 around a little bit. There are folks in the overflow room
20 as well who would like to speak. Going to try and have it
21 be people in this room speak and then bring the people in
22 overflow in to speak. Each member of the public will have
23 60 seconds, one minute, to state their case. We'll be
24 keeping track of the time. We'll obviously let you finish
25 up your point as that minute ends, but when that minute is

1 that Dale Zorn -- I'm not going to say "Landslide" because
2 that's not in this motion -- was elected as the republican
3 nominee to the office State Representative, District 34.

4 MR. HOUSKAMP: I'll second that.

5 MR. DAUNT: We have a motion and a second. Any
6 discussion on this? Seeing none, all those in favor of the
7 motion as stated please signify by saying "aye."

8 ALL: Aye.

9 MR. DAUNT: Any opposed? Motion carries four to
10 zero.

11 (Whereupon motion passed at 12:18 p.m.)

12 MR. DAUNT: All right. Agenda item number four,
13 consideration of the sufficiency of the initiative petition
14 submitted by Promote the Vote 2022. Mr. Brater, I will turn
15 it over to you for a rundown of the staff report and items
16 that you handled and then we'll hear from our witnesses.

17 MR. BRATER: Thank you, Chair Daunt. So this is
18 the Promote the Vote 2022 constitutional amendment petition.
19 It was submitted on July 11th, 2022, and the number of valid
20 signatures required for certification was 425,059. The
21 total filing that was received included 664,029 signatures
22 on 141,339 sheets. Following the practice that the Board
23 has adopted, the Bureau of Elections first conducted a face
24 review of all the sheets and determined which sheets should
25 not be included for consideration as containing valid

1 signatures because the entire sheet was invalid. And based
2 on that, we determined that 13,614 signatures on 4,298
3 sheets should be excluded from the potential universe of
4 valid signatures. At that point, we proceeded to sort,
5 count, and stamp the sheets to get a total number of
6 signatures before drawing the sample. Under the random
7 sampling procedures that the Board has adopted, we had a
8 sample of 568 sampled signatures. And based upon the
9 universe, the total they had which was a pretty high
10 cushion, they needed to have a -- at least 389 of that 568
11 total sample be valid registered voters that are otherwise
12 acceptable signatures in order for us to recommend
13 certification. And that equates to a, I believe they needed
14 a percentage of 62 -- is that right? -- 62.5 percent?
15 Sorry. I'm on the wrong page here. No, 6- -- yeah. Sorry.
16 68.5. I apologize.

17 So the result of our review of each of the
18 signatures in the random sample indicated that they did have
19 a total of 445 valid signatures in the sample and that
20 projects to a total estimated number of signatures that are
21 valid of 507,780, and that's 62,760 more than the minimum
22 threshold that would be required for certification. The
23 margin is high enough that under the statistical model that
24 we use to extrapolate the projected number of valid
25 signatures and predict how many there are based on the

1 sample, because of that margin the confidence level is 100
2 percent.

3 I will note that there were some objections raised
4 to some of the sheets that we excluded initially. There
5 were a total of 200 signatures that we excluded from the
6 universe initially based on our face review that the
7 proponents, Promote the Vote, objected to. After looking at
8 their review, we agreed that 200 out of the 264 signatures
9 that they thought should go back in should go back in which
10 increased our universe of valid signatures from 650,415 to
11 650,615, but that is a 99.97 percent accurate universe and
12 therefore the difference was so small that it made no
13 difference in our -- in our projected number of valid
14 signatures. We did not get -- so based on that we're
15 recommending certification based on the number of valid
16 signatures.

17 We did not get challenges to individual signatures
18 on the grounds that the voter was not registered or a
19 duplicate signature or something like that, but there was a
20 challenge that was filed by Defend Your Vote and their
21 challenge concerns an argument I'm sure we're going to hear
22 about shortly that there are sections of the constitution
23 that would be altered or abrogated by this proposed
24 constitutional amendment that were not listed in the
25 petition. So section 482 provides -- of the election law

1 does provide that the sections that would be altered or
2 abrogated should be listed on the face of the petition.
3 Staff reviewed that challenge. We did provide you in our
4 staff report with some of the relevant case law from the
5 courts in terms of, you know, what constitutes a provision
6 being changed or replaced or altered or abrogated. But
7 given the fact that the petition did include sections that
8 were altered or abrogated and the argument we received was
9 about the interaction between the -- what would be the new
10 sections of the constitution and existing sections and the
11 interplay of those sections. In our view that was a legal
12 argument. That was more of a judicial function and
13 therefore we didn't weigh in as the -- as the secretary and
14 the staff to the Board, we didn't weigh in on the legal
15 merits of those arguments.

16 So -- so our -- our recommendation is based on the
17 number of signatures being valid, being in excess of what is
18 required and us not identifying a specific basis where the
19 Board could, you know, make those sort of judicial
20 determinations about how seconds are affected and our
21 recommendation is based on that.

22 MR. DAUNT: Mr. Director, thank you.

23 MS. BRADSHAW: Mr. Chair, may I ask a question --

24 MR. DAUNT: You may.

25 MS. BRADSHAW: -- of Director Brater? Just

1 because we do have two constitutional amendments, petitions
2 to be in front of us. Director Brater, can you go over
3 how -- what the role of this Board is up until now and what
4 our role is, you know, where we -- up until now? We'll go
5 do that question first. I might have to ask the second
6 part, Chairman, after. But what our role is in this
7 petition process getting us to today.

8 MR. BRATER: Sure. Well, so first if there is a
9 proposed constitutional amendment petition, initiative
10 petition, the proponents have the option -- they're not
11 required to do it, but they have the option of requesting
12 that I draft a 100-word summary which the Board has to
13 approve that will go on the face of the petition and that
14 has to be fair and impartial and explain what the petition
15 does. They did follow that process in this case and the
16 Board did approve language that they used on the petition.
17 That forecloses the Board from considering argument that the
18 petition on the face was misleading because the Board has
19 already approved the language that went on there.

20 There are al- -- the Board also offers preliminary
21 approval as to form. That's something that's done as a
22 courtesy to petition circulators so that the Board and staff
23 can have a look at the petition form before it goes out.
24 They also availed themselves of that in this case. And then
25 they're also required under 483(a) of the Election Law to

1 provide us with a copy of the petition that will be
2 circulated before they go out and circulate. So that's been
3 the Board's responsibilities up to this point. And now, at
4 this stage, the Board's responsibility is to determine
5 whether there are enough valid signatures on the petition,
6 and that includes both the signatures belonging to voters
7 who are registered and otherwise eligible to complete the
8 form, and then also the sheets that those individuals sign
9 have to meet the formal requirements of Section 42 of the
10 Election Law. And then further on we will consider the
11 questions of the 100-word summary that will go on the
12 ballot, but that's also within the Board's purview.

13 MS. BRADSHAW: I was just going to say thank you
14 for the explanation. I think that it's important for
15 everyone to kind of understand where our role is and that
16 where we are in this process and I appreciate that. And
17 thank you, Mr. Chair, for allowing me to ask that question.

18 MR. DAUNT: Absolutely. Are there other questions
19 for Director Brater? All right. In that sense, I'll call
20 up Mr. Trebilcock. He is representing the sponsors of this;
21 correct?

22 MR. CHRIS TREBILCOCK: Yeah, I am.

23 MR. DAUNT: Okay.

24 MR. CHRIS TREBILCOCK: But typically, at least in
25 past practice, usually the challengers go first and then we

1 respond to the challenges and that's the way the process
2 works in terms of they submit a challenge and then we file a
3 response to that challenge. But as -- as Chair --

4 MR. DAUNT: I --

5 MR. HOUSKAMP: That might be a way to go.

6 MR. CHRIS TREBILCOCK: -- I -- I --

7 MR. DAUNT: I actually was just following some
8 guidance I had of previous ones. So I am --

9 MR. FRACASSI: It's up to you.

10 MR. BRATER: It's up to you.

11 MS. BRADSHAW: It's up to you.

12 MR. DAUNT: I am --

13 MS. BRADSHAW: Because you're just going to have
14 him come back up.

15 MR. DAUNT: -- yeah. I mean, you're going to --

16 MS. GUREWITZ: I think that because a challenge
17 was filed and a response was filed, that it does make more
18 sense to have the challenger and then the responder.

19 MR. DAUNT: That's fine with me. I'm --

20 MR. CHRIS TREBILCOCK: That's the way us lawyers
21 are used to it, but, hey --

22 MR. DAUNT: I have -- I have no doubt that you
23 guys are going to ping pong back and forth on this. So in
24 that instance, I'll have Jonathon Koch come up on behalf of
25 the challenger. And, Mr. Koch, you are an attorney. Please

1 state your name, spell it for our reporter, who you're here
2 on behalf of. And just for your edification, looking at
3 giving around, you know, five minutes for you to expound,
4 we'll ask questions. You know, if you think you need more
5 time, please just let us know but our goal would be to try
6 to wrap this.

7 JONATHAN KOCH

8 MR. JONATHAN KOCH: Chairman Daunt, members of the
9 Board, my name is Jonathon Koch, J-o-n-a-t-h-a-n K-o-c-h.
10 I represent the ballot question committee Defend Your Vote.
11 We are the entity that filed the challenge to Promote the
12 Vote's petition.

13 There are three points I want to address to the
14 Board. First, the Board has a duty to address the alter and
15 abrogate issue and to declare that a petition that does not
16 comply with the form requirements of the Michigan Election
17 Law is insufficient and it must be rejected, and that the
18 alter and abrogate requirement is a form requirement that
19 falls within that. Second, the alter and abrogate
20 requirement is a form requirement, but it matters. It's --
21 it's important because it ensures that voters are informed
22 about the consequences of the proposed constitutional
23 amendments that they're being asked to vote on. And third,
24 Promote the Vote's proposal would abrogate several
25 constitutional provisions including Article 2, Section 2,

1 that were not republished in the petition. Because that
2 they did not republish those petitions, it is not in the
3 form prescribed by law which means this Board has a duty to
4 reject it and refuse to certify it.

5 With respect to the duty to address the alter and
6 abrogate issue, the Supreme Court has held that this Board's
7 duty with respect to petitions is to determine the
8 sufficiency of the form. The MCL 168.482(2) says that each
9 part of the petition must, mandatory, be in the form
10 prescribed by the rest of the statute and in the very next
11 subsection it says that if the proposal would alter or
12 abrogate an existing provision to the constitution, it must
13 so state -- the petition must so state and the provisions to
14 be altered or abrogated must be inserted.

15 As Mr. Avers mentioned earlier, to abrogate a
16 provision means that it is rendered wholly inoperative, but
17 it doesn't have to be the entire provision. It can be a
18 discreet part of a provision including something as small as
19 a single word. The upshot is that the requirement that the
20 petition republish the provisions that are altered and
21 abrogate is a form requirement that this Board is tasked
22 with determining and deciding before it makes the decision
23 to certification. And if a petition does not republish a
24 constitutional provision that would be altered or abrogated
25 if the petition is adopted, the Supreme Court has said that

1 that is fatal to the petition which means it must be
2 rejected.

3 Skipping over to, ahead to whether alter and
4 abrogate's provisions, our challenge rate is five separate
5 rounds. Each, any one of them is true and sufficient.
6 Today I'm going to focus on Article 2, Section 2. That's
7 the provision of Michigan's constitution that gives the
8 legislature authority to, quote, "exclude persons from
9 voting because of mental incompetence or commitment to a
10 jail or penal institution." In plain English, Article 2,
11 Section 2 authorizes our state's legislature to exclude
12 otherwise qualified voters from voting if they are mentally
13 incompetent or incarcerated. The petition, if adopted,
14 would destroy that grant of authority in two steps. First,
15 it provides that all qualified electors would have a
16 fundamental right to vote. Then it provides that no one,
17 not the legislature or any other person can quote, enact or
18 use any law that would have the intent or effect of denying,
19 abridging, interfering or unreasonably burdening that right.
20 Note that if that's adopted, even something that's a
21 reasonable interference or a reasonable denial, would be
22 constitutionally invalid. If Promote the Vote's proposal is
23 adopted, the legislature would be prohibited from enacting
24 any law that would exclude someone from voting because they
25 are other- -- if they are otherwise qualified to do so.

1 As Mr. Avers mentioned, there are four
2 qualifications for voting under Michigan's constitution and
3 the Michigan Election Law. The four qualifications are U.S.
4 citizenship, they have attained the minimum age, they are a
5 resident of the state, and they are a resident of a locality
6 in the state where they would be voting. The statute does
7 not list incarcerated status. It doesn't list mental
8 competence as qualifications for voting. This Board courts
9 no one except for the legislature can rewrite statutes to
10 say that they mean something that they don't say based on
11 their plain text. What that means is that someone who is
12 serving a sentence, who's been convicted of a felony,
13 serving in prison, who is currently incarcerated but is a
14 U.S. citizen who's of the age to vote, who's a resident of
15 Michigan and the resident of a locality in Michigan, that
16 person is qualified to vote despite, in spite of, regardless
17 of their incarcerated status. As I'm sure you're going to
18 hear from Mr. Trebilcock, they disagree with that. They say
19 that in their -- in their response to our challenge they
20 say, well, as an abrogated that isn't affected because a
21 restriction on an incarcerated felon's ability to vote,
22 that's -- that's just another qualification. But as we know
23 from the statute that said -- in the constitution provision
24 regarding qualifications of electors, that isn't true. And,
25 in fact, we know that from the statute that the legislature

1 has enacted as an exercise of their Article 2, Section 2
2 authority. Can I continue for a minute or two?

3 MR. DAUNT: Yup.

4 MR. JONATHAN KOCH: MCL 168.492(a) provides that
5 an otherwise qualified voter who is currently in prison but
6 has not been sentenced or convicted can vote. But that same
7 otherwise qualified person who has been convicted and has
8 been sentenced can no longer vote. Which means that for the
9 legislature to actualize its authority under Article 2,
10 Section 2, it would be restricting someone who's otherwise
11 qualified to vote and the legislature has recognized that.
12 Because that authority would just be obliterated by the
13 amendments proposed in the petition, it is Article 2,
14 Section 2 would be rendered wholly inoperative which means
15 it's been abrogated. It was not republished so the petition
16 doesn't -- doesn't meet the form requirements of the
17 Michigan Election Law 168 -- MCL 168.482(3).

18 We've heard a lot of talk about the substance of
19 these petitions. That is beside the point for this Board.
20 It doesn't matter whether it's a good idea to have
21 incarcerated felons vote. It doesn't matter if it's a good
22 idea to allow ballot harvesting in Jackson State Prison.
23 What matters is that the people have a right to be informed
24 of the effects of the constitutional amendments they're
25 being asked to consider. They have a right to know what is

1 going to be abrogated. Here the petition would abrogate
2 Article 2, Section 2, but that was not republished. As a
3 result, that -- that -- that failure to republish is fatal
4 to Promote the Vote's petition and this Board has a duty to
5 reject it.

6 MR. DAUNT: Okay.

7 MS. BRADSHAW: I have one question.

8 MR. DAUNT: Yes.

9 MS. BRADSHAW: But just one. Let me ask Director
10 Brater and then I'll ask you. Is that okay? Because I --
11 it's -- is this one of the petitions that came to us twice
12 for approval to form? Because I cannot recall.

13 MR. BRATER: We'll have to check on that.

14 MR. DAUNT: I don't think so.

15 MS. BRADSHAW: I can't remember if this was or
16 not.

17 MR. DAUNT: I don't think so.

18 MS. BRADSHAW: I know the second one was, but this
19 one --

20 MR. DAUNT: Secure MI Vote which was essentially
21 kind of --

22 MS. BRADSHAW: Right. But that was the checkbox.
23 I didn't know if Promote the Vote had a -- can't remember if
24 we did a -- on the -- an approval pending that they removed
25 the union label. I don't know if this one came under that

1 and that's why I'm asking this question.

2 MR. BRATER: I think it did, but we're checking.

3 MS. BRADSHAW: Because it turns in my question for
4 you. So --

5 MR. DAUNT: I believe --

6 MS. BRADSHAW: -- let me wait 'til I get the
7 answer and then I'll --

8 MR. DAUNT: -- if my recollection is correct, the
9 sponsors agreed to make that change -- make that change
10 conditional and so they didn't have to come back.

11 MS. BRADSHAW: Yeah, that's what I was looking,
12 conditional.

13 MR. DAUNT: I believe that's how it went, but --

14 MS. BRADSHAW: Yeah. I just want to --

15 MR. BRATER: That's -- that's -- that's correct.

16 MS. BRADSHAW: -- that's -- okay. So this one was
17 not. All right. So the question I have is if there was a
18 question of abrogation or alteration, was it not -- why was
19 it not brought up when we were approving this petition to
20 form?

21 MR. JONATHAN KOCH: I mean, the most honest answer
22 is I don't know. My client didn't exist. That's the best
23 answer I have for you.

24 MS. BRADSHAW: I'm just -- I'm asking maybe
25 because obviously it's, you know, we are now at the point

1 that we are looking at signatures as already, you know, and
2 that's -- this is why I'm asking the question to you, so --

3 MR. JONATHAN KOCH: I understand the practical
4 reality of that, but I think my response would be that
5 regardless of what has happened or whether it could have
6 been raised earlier, this Board still has a duty to follow
7 the law, to apply the law as it's written, and that's what
8 it says.

9 MS. BRADSHAW: I understand. So my next question
10 is to Director Brater if that's okay?

11 MR. DAUNT: Yeah, please.

12 MS. BRADSHAW: Unless anyone has any questions?

13 MR. DAUNT: Go ahead. Continue.

14 MS. BRADSHAW: My next question, Director
15 Brater -- and I'm sorry, Adam, but I'm going to ask this
16 one, too. Have we -- oh, we probably have in my time on
17 this Board, but it's been a little bit. Have we had this
18 issue come up before in front of us? And if we did, can you
19 refresh my memory on that one? And that might even include
20 the Attorney General representation in that, too.

21 MR. BRATER: Not in my tenure. I don't --

22 MS. BRADSHAW: I know not in yours.

23 MR. FRACASSI: Can I -- can I clarify? When you
24 say "this issue," you mean the alter and abrogation issue
25 specifically?

1 MS. BRADSHAW: Yes. After signatures have been
2 collected.

3 MR. FRACASSI: I can -- I know alter and
4 abrogation has come up.

5 MS. BRADSHAW: I remember that, --

6 MR. FRACASSI: Yeah. That's -- I mean --

7 MS. BRADSHAW: -- but I can't remember if it was
8 before or after signatures were collected.

9 MR. FRACASSI: I don't know off the top of my head
10 to be honest.

11 MR. BRATER: We'll try to research that quickly if
12 we can.

13 MR. FRACASSI: Yeah.

14 MR. GRILL: If I could? It has. There was a
15 case, it was Protect My Jobs -- or Protect Our Jobs versus
16 Board of State Canvassers. It was a Supreme Court case in
17 2012.

18 MS. BRADSHAW: Before I was on the Board.

19 MR. GRILL: It was before you were on the Board.

20 MS. BRADSHAW: It was before I was on the Board.

21 MR. DAUNT: I was -- I was going to say I believe
22 I saw somewhere in some of the materials that this -- this
23 had come up before which is my -- my issue, my struggle on,
24 you know, form versus substance, I think I -- I tend to
25 think this is -- this is a form issue. Then, okay, squaring

1 with previous form approval, are -- what is kind of
2 precedent? What has been done previously when things have
3 been noticed after that initial form approval is provided?
4 I sympathize with the argument on you've noticed something,
5 you should address it. I just want to make sure that
6 it's -- we're not just being made up on the fly.

7 MR. JONATHAN KOCH: So I understand that. I
8 think, you know, without having an encyclope- -- encyclopedic
9 knowledge of Michigan case law on all things, I do know that
10 if the Board hasn't voted to certify whether it's
11 deadlocked, three-one or if there hasn't been a vote on
12 decision on this revocation, I don't know that you would
13 have the mandamus remedy provided by MCL 168.479, so you
14 wouldn't have kind of the legal hook for us to start
15 fighting it out in court until that decision had been made.
16 And I know that at -- in at least some of the case law
17 involving alter and abrogate, especially the 2012 Project
18 Your Jobs case, I believe that decision, it -- it -- it had
19 been certified which means it was after signatures. I don't
20 know when it was raised, but it was at least decided and the
21 challenge was filed after that date.

22 MR. DAUNT: And was that -- was that brought based
23 on a deadlock or was that the Board certified but the
24 opponents or whomever ultimately decided, "oh, you know
25 what? We think we have a solid legal argument here, we're

1 going to bring it anyways"? How -- how does that play out?

2 MR. JONATHAN KOCH: So Protect Our Jobs involved I
3 think three or four petitions. So I believe the one that,
4 where they -- where they submit it had been al- -- it had
5 alternate --

6 MR. DAUNT: It was casinos, wasn't it?

7 MR. JONATHAN KOCH: I think so. It was casino
8 liquor licenses. Regard- -- it was a -- it was a provision
9 that had been altered and abrogated and I believe the Board
10 had voted to -- that it had declared it insufficient. There
11 had been a -- I don't know what the vote was, but I don't
12 believe it --

13 MR. DAUNT: Because of signatures or the alter and
14 abrogation?

15 MR. JONATHAN KOCH: I believe it was because of
16 alter and abrogate, but, I mean, that's --

17 MR. DAUNT: Okay.

18 MS. BRADSHAW: Mr. Chair, may I ask if we can -- I
19 know you're an attorney, but I also would like to ask our
20 Attorney General representation on the table of what that
21 proceeding looked like, too. If that's okay?

22 MR. GRILL: Sure. The Protect Our Jobs issue
23 specifically was a ballot question committee that brought an
24 action in the Court of Appeals seeking a writ of mandamus
25 directing the Board of State Canvassers and the Director of

1 Elections to place on the 2012 general election ballot its
2 proposal for amendments to the constitution. That provided
3 for, among other things, various collective bargaining
4 rights. The Board had approved the form of the petition and
5 the director had in that case found that there were valid --
6 set valid signatures to qualify the petition, but the Board
7 in that case deadlocked on whether the petition should be
8 placed on the ballot. Then after that, there was an action
9 for mandamus brought which ultimately concluded with the
10 court's determination. There was a lengthy opinion
11 ultimately concluding with roughly five paragraphs
12 determining what was or was not altering and abrogating
13 leading to I believe affirming the judgment of the Court of
14 Appeals, granting relief on the complaint of mandamus in
15 that case to place the proposed constitutional amendments on
16 the general election ballot.

17 MR. JONATHAN KOCH: One of them was not, though.
18 I think there was three petitions and two of them were put
19 on and one of them was not, and it was the one that was not
20 was the -- was the one that abrogated without republishing.

21 MS. GUREWITZ: I'm sorry. Can you --

22 MR. JONATHAN KOCH: Sorry.

23 MS. GUREWITZ: -- get closer to the microphone?

24 MR. JONATHAN KOCH: Sorry.

25 MR. GRILL: Yeah, but that's --

1 MR. JONATHAN KOCH: I know that, like -- sorry. I
2 don't mean to be confrontational, but I think that in the
3 holding of the case, the last paragraph, it affirms with
4 respect to one aspect of it which would not be -- which
5 would be keeping a petition off the ballot.

6 MR. GRILL: According what -- I'm reading from the
7 court's opinion here.

8 "Accordingly, in Protect Our Jobs we affirm the
9 judgment of the Court of Appeals granting relief on the
10 complaint of mandamus. In Michigan Alliance for
11 Prosperity and The People Should Decide, we grant
12 relief on the complaints for mandamus in part, and
13 direct the -- direct the Board of State Canvassers, the
14 Secretary of State, and the Director of Elections to
15 proceed as necessary to place the proposed
16 constitutional amendments on the November 2012 ballot.
17 We deny relief in all other respects. In Citizens for
18 More Michigan Jobs we dismiss the complaint for
19 mandamus filed in the Court of Appeals and deny relief
20 in all other respects."

21 But the conclusion of the court here, you know,
22 with the five paragraphs laying out the alter and abrogate
23 language is still -- that applies to all.

24 MR. DAUNT: So thank you. There's obviously a ton
25 of stuff that we read. I guess I'm -- I'm trying to

1 understand because it's my understanding that one of
2 those -- and I believe it was casinos, something to do with
3 casinos, was deadlocked because of an alter and abrogation
4 and was not allowed to proceed. But what you're saying
5 seems to contradict my understanding of that. So I'm -- I'm
6 looking for clarity on that.

7 MR. GRILL: I guess I'm not sure I -- how can I
8 clarify?

9 MR. DAUNT: Well, the -- it was liquor licenses, I
10 believe, and that some kind of power was given to the
11 casinos related to liquor license, but the constitution only
12 gives it to certain, --

13 MS. GUREWITZ: Liquor Control Commission?

14 MR. DAUNT: -- to the Liquor Control Commission.
15 And so because of that, that was an abrogation that was not
16 properly addressed which would mean if the court ruled that,
17 then the casino issue wasn't allowed to move forward.

18 UNIDENTIFIED SPEAKER: Correct.

19 MR. DAUNT: But it -- what you said is that they
20 were all allowed to move forward and I'm --

21 MR. JONATHAN KOCH: But it was the last part where
22 the complaint for --

23 MR. DAUNT: I'm not an attorney so I'm getting
24 lost in the legal language, so --

25 MR. JONATHAN KOCH: Sorry.

1 MR. GRILL: Well, in fairness I think that kind of
2 underscores what Director Brater was saying. Is that there
3 is a part of this that veers into legal determinations of
4 whether or not what effect this proposal would have if
5 adopted and how would it interact with other constitutional
6 provisions. I suppose the thing to keep in mind, I think
7 the other probably worth mentioning is the Court of Appeals
8 decisions in the Citizens for Protection of Marriage versus
9 Board of State Canvassers which was from 2004. There were
10 subsequent cases as well. But the significant part of the
11 holding held the Board's authority and duties with regard to
12 proposed constitutional amendments are limited to
13 determining whether the form of the petition complies with
14 the statutory requirements and whether there are sufficient
15 signatures to warrant certification of the proposal. In
16 that case, the court held that it was error for the Board to
17 consider either the merits of the proposal or the lawfulness
18 of the proposal. Also noting in that case the court said
19 that well establis- -- it is well established that a
20 substantive challenge to the subject matter of the petition
21 is not right for review until after the law is enacted.

22 MR. DAUNT: Thank you.

23 MR. HOUSKAMP: Can I ask a question? Listen, I'm
24 the newcomer here. Okay? You guys have all done this
25 before.

1 MS. BRADSHAW: I think I'm the only one. Sorry,
2 Richard.

3 MS. GUREWITZ: We're all rookies here.

4 MR. HOUSKAMP: We're all new -- we're all new --

5 MR. DAUNT: Relatively fresh Board.

6 MR. HOUSKAMP: If I'm just hearing all the
7 legalese put aside, what I'm hearing you say is the form of
8 this petition, form, whoever blessed it in March or whenever
9 or May or June, the form of the petition doesn't rise,
10 doesn't meet the standard that the Michigan law calls for;
11 is that correct?

12 MR. JONATHAN KOCH: Yes. That is -- that is our
13 position.

14 MR. HOUSKAMP: I mean, it doesn't get any simpler.

15 MR. JONATHAN KOCH: Correct.

16 MR. HOUSKAMP: And it doesn't meet that standard
17 because there were pieces that were omitted that a simple
18 review of it back whenever --

19 MR. JONATHAN KOCH: Yes.

20 UNIDENTIFIED SPEAKER: Uh-huh; yes.

21 MR. HOUSKAMP: -- okay, would have called out and
22 said, "hey, this alters or this changes or this voids or
23 abrogates Article 2, Section 2," --

24 MR. JONATHAN KOCH: Yes.

25 MR. HOUSKAMP: -- whatever the case might be. And

1 so those pieces were left out which means also that in spite
2 of the fact that there's thousands, hundreds of thousands of
3 signatures, in effect hundreds of thousands of signatures
4 signed something that wasn't a legal petition.

5 MR. JONATHAN KOCH: Yes. And, I mean, and --
6 and -- so -- so to break that out --

7 MR. HOUSKAMP: That was a yes or no question.

8 MR. JONATHAN KOCH: Yes. I'm a lawyer. Sorry. I
9 have to make everything complicated.

10 MR. HOUSKAMP: It's when you guys start going
11 beyond yes and no that I get confused here.

12 MR. JONATHAN KOCH: Yes, you're right.

13 MR. HOUSKAMP: That would be correct.

14 MR. JONATHAN KOCH: If there are any other
15 questions?

16 MS. BRADSHAW: Not for me.

17 MR. DAUNT: No. Mary Ellen?

18 MS. GUREWITZ: No.

19 MR. DAUNT: Okay.

20 MR. JONATHAN KOCH: Thank you.

21 MR. DAUNT: Thank you, sir. With that, bring up
22 Mr. Trebilcock on behalf of the sponsors and supporters of
23 this, and we'll give you the initial five with the
24 understanding that you'll probably need to go a little
25 longer in questions, so please do just state name, who

1 you're with and we'll go from there.

2 CHRIS TREBILCOCK

3 MR. CHRIS TREBILCOCK: Good -- I guess we're
4 afternoon, aren't we?

5 MS. BRADSHAW: We're afternoon.

6 MR. DAUNT: Yup.

7 MR. CHRIS TREBILCOCK: Yeah, jeez. Good
8 afternoon. Good to see you all again. Member Houskamp,
9 nice to meet you. Welcome to the party. And thank you for
10 your opening statement, Chair Daunt. I think they were dead
11 on, although you're not much of a warmup act for us
12 attorneys. Thank you.

13 Compared to recent petition challenges this Board
14 has reviewed and will yet review today, this challenge is as
15 narrow as it is deep. Mr. Koch doesn't challenge the fact
16 that PTV submitted over half a million valid signatures.
17 Doesn't assert that PTV employed fraudulent circulators. He
18 doesn't argue that a union bug contains too small a font
19 size or there is some other issue with the form. His sole
20 and singular argument is that PTV did not list five sections
21 of the constitution that would be completely unchanged if
22 this proposal was passed and there is no other error in the
23 petition sheets. That's it. No more, no less. And I think
24 Member Houskamp summed it up and said it is pretty simple.
25 You're saying that these five provisions are abrogated and

1 they should have been listed.

2 What he fails to mention and I'm -- and he's
3 hoping you all forget and I think we've touched on are two
4 cornerstone principles that this Board must follow. The
5 Bureau and the Board have already approved this petition as
6 to form. And while Mr. Koch wasn't here challenging it
7 because apparently he didn't have a client willing to pay
8 him at that point, Mr. Avers did and he full -- and he had
9 got his actual full rate, Chair Daunt, because he was here
10 on Secure MI Vote and they submitted challenges and yet they
11 did not bring up alter or abrogate at that time. And let's
12 be clear, there's two standards. There's alter or abrogate.
13 They're not even saying anything has been altered. Altered
14 is a more nuanced argument in that it could modify or it
15 shifted and it should be listed. They're saying it
16 abrogated which is a complete evisceration, to quote Mr.
17 Koch's old boss Justice Zara, not exactly a bastion of
18 progressive or liberal jurisprudence, says it has to be
19 completely eviscerated. I don't think anybody reading this
20 provision and gives it a fair -- this proposal and giving it
21 a fair reading would ever think that those provisions are
22 eviscerated and rendered completely inoperable. But those
23 changes weren't made back in February when this petition was
24 approved as to form by this Board by a 4-0 vote. Now is not
25 the time to go back and revisit what was already done. Over

1 half a million voters, Michigan voters, have supported this
2 proposal as approved by this Board and it's time for this to
3 be certified for the ballot.

4 Second, the Michigan Supreme Court has cautioned
5 that these ballot -- that ballot committees are not required
6 to get prior judicial determination as to whether a
7 provision is abrogated or not. That is not the requirement
8 that ballot committees are held to, but that is just exactly
9 what Defend Your Vote is arguing for. To weigh in to these
10 issues at the level of complication and detail requires a
11 constitutional lawyer and you've heard the various debate
12 and not everybody understanding what this court said or this
13 quote said. This -- those are judicial determinations as
14 stated by Director Brater. It is not your job to carry
15 Defend Your Vote's water. The duty of this Board as quoted
16 in the case by the Attorney General in 2002, is to make sure
17 the form of this petition substantially complies with the
18 requirements of Section 482 and has submitted sufficient,
19 valid signatures under the constitution supporting the
20 people's right to put these types of proposals on the
21 ballot. They have done that. You've heard from the
22 volunteers who have been before you. They have done that.
23 The Board's duty is to certify this petition.

24 Now, assuming you decide to delve into and address
25 any of the substance of whether things were actually

1 abrogated, applying standards of the Supreme Court which a
2 court would be doing, I think the issues are actually
3 relatively simple and straightforward which is lucky because
4 as you know I'm a simple Yooper with a public education, not
5 some big private school in the Flint area, you know.

6 So it's -- I was amazed to learn from reading the
7 challenge that we had erased election day from the
8 constitution had I known, or that your jobs are going to be
9 a lot easier because we've eliminated the power of the
10 people to bring any statutory or constitutional initiatives
11 forward -- going forward. I was amazed because those things
12 are not in there. If it sounds absurd, it's because it is
13 absurd. Those things aren't in the proposal. Give it a
14 read. Not before any of these arguments were made did any
15 single person think that we were getting rid of election
16 day? Come on. Or that we're eliminating ballot proposals
17 in this state going forward? Come on. Give me a break. It
18 sounds absurd and it is absurd.

19 Simply put, the challenge did not even argue much
20 less establish that the five provisions they cite would be
21 rendered wholly inoperative. That's a quote from Mr. Koch's
22 old boss, Justice Zara, in Protect My Jobs. "Wholly
23 inoperative." And, quote, "Change that would essentially
24 eviscerate an existing petition." He focused in apparently
25 because that's the best argument he has on the

1 constitutional -- the provision in the constitution, Article
2 2, Section 2, that grants the permissive authority to the
3 legislature to deny incompetent individuals and felons from
4 being qualified voters. All you have to do is read our
5 proposal. The only changes that are in there are for
6 qualified voters. We don't touch the right of who is a
7 qualified voter. The argument of DYV ignores the
8 introductory clause of that provision that was cited where
9 it says "qualified voters." You can't read that out of the
10 proposal. I'm sorry. Even your middle school English
11 teacher would agree with me on that, Chair Daunt.

12 MR. DAUNT: High school, but you've got a good
13 memory.

14 MR. CHRIS TREBILCOCK: High school, you know.
15 That -- that's just how simple -- how simple it is. You
16 know, I don't -- I don't think I need to go through every
17 single point. We've submitted it. I trust that you've read
18 it. If you have questions, I'm happy to answer them. But I
19 think you're all wise enough and experienced enough to see
20 through this misinformation that was put forward and make
21 the courageous vote because we all know it's time to make
22 courageous steps sometime and now is the time to take these
23 courageous steps, look at the form and follow your duties
24 without any measure of what the substance of these proposals
25 contain.

1 So we would respectfully request that you make a
2 motion to certify this proposal for the ballot and that you
3 affirm -- affirmatively vote in favor of that proposal or
4 that motion. Thank you.

5 MR. DAUNT: Thank you, Chris.

6 MR. CHRIS TREBILCOCK: Any questions?

7 MR. DAUNT: Questions?

8 MS. GUREWITZ: Yeah, I have a question. Director
9 Brater has said in the staff report that the challenge
10 raises legal questions. Do you think -- do you contend or
11 understand that this Board -- let me back up a minute.
12 Member Houskamp and Member Daunt and Member Gurewitz are all
13 new to this, relatively new to this Board and have not
14 addressed these complicated issues before. But I think we
15 do understand that we are not a court and that we cannot
16 make -- we cannot decide questions of law. Is alter and
17 abrogate, whether provisions in the Promote the Vote
18 initiative, whether they alter and abrogate existing
19 provisions, is that a question of law?

20 MR. CHRIS TREBILCOCK: Absolutely and the Supreme
21 Court has stated that. It's a question of law and requires
22 constitutional lawyers which, you know, it's a pretty high
23 standard and I think one that the statutes and the
24 constitution don't vest in this Board. And I don't view
25 alter and abrogate any different than the challenges that

1 are put up about single object or whether a proposal is a
2 complete rewrite to the constitution. The courts have been
3 very, very clear in those instances the time to challenge --
4 make those challenges is after the people have voted on it.
5 That is no different than right now. They should be
6 approved and any of those such challenges should be brought
7 up after the people vote. Let the people vote.

8 MR. HOUSKAMP: Can I ask a question again? I'm
9 coming at it from not being an attorney.

10 MR. CHRIS TREBILCOCK: Bless you.

11 MR. HOUSKAMP: I read your -- I read your
12 response -- yeah, well. I read your -- I read your response
13 and I read the challenge and I read them not only once, but
14 a couple times. I have to tell you it was well written, but
15 I did fall asleep the second time. If I'm understanding
16 this correctly, a big part of your argument is, is that we
17 aren't attorneys and therefore we shouldn't be making legal
18 decisions about -- or legal opinions about whether it's
19 abrogated or not and that that's really the province of the
20 court, probably the Supreme Court. If this -- if this
21 committee sends this -- sends this proposal out and doesn't
22 let it go to the ballot, what happens then? Does it then go
23 in front of the court and the court then makes this
24 decision? What happens if we -- what happens if we say,
25 yeah?

1 MR. CHRIS TREBILCOCK: So let me say a few things.
2 First, I'll have to use your tip and read my briefs to my
3 kids to get them to sleep. It takes more than a couple
4 readings, I think. Second, the -- if this Board does not
5 vote and perform its clear legal duties as required under
6 the constitution, then as the proponents to get this on the
7 ballot we would have to go to the Supreme Court and file a
8 writ of mandamus and a complaint for declaratory action and
9 require them -- require -- ask the Supreme Court to direct
10 you to do your clear, legal duty. So that's the short
11 answer. I think the longer answer is, is that I think the
12 courts have been clear in terms of what issues should be
13 brought up after a vote of the people and that goes to the
14 substance and that includes things like title and object,
15 alter and abrogate, is it a signif- -- it is a complete
16 rewrite of the constitution or not? And so those things
17 come up after a vote of the people, not here. I think the
18 Attorney General (sic) Mr. Grill provided this -- this Board
19 absolutely great legal advice as I -- as I would always
20 expect which is quoting the Supreme Court from 2002, the
21 Board's duties to certify the proposal after determining
22 whether the form of the petition substantially complies with
23 statutory requirements and whether the proposal has
24 sufficient signatures in support. In this case you can look
25 at the four corners and there's other cases that say the

1 Board's duties and authority is restricted to the four
2 corners of the document, reviewing signatures submitted,
3 things of that nature. If you look at the four corners of
4 the petition form, which you already did once and if you
5 choose to do it again, it substantially complies. It's
6 three pages of provisions that include provisions that would
7 be altered or abrogated. So to sit here today and somehow
8 suggest that this petition does not substantially comply
9 with the form as required under the Michigan Election Law?
10 I mean, the arguments put forward are kind of absurd. We're
11 getting rid of election day? Mr. Houskamp, if you read that
12 petition, did you -- do you agree or do you think it got rid
13 of election day?

14 MR. HOUSKAMP: The problem is I read the petition
15 and I also read your challenge or responses. Part of the
16 problem is, is that part of what the challenger is saying
17 here is if you read it, it really makes sense. And maybe
18 not the election day issue as much as some of the issues of
19 any ballot brought up or anything that the citizens do or
20 anything that the legislature does is -- is -- is -- is --
21 is impugned here.

22 MR. CHRIS TREBILCOCK: I guess --

23 MR. HOUSKAMP: I hear what you're saying about,
24 well, we push it on the ballot and then worry about it
25 later, but that -- that doesn't seem to be -- I mean, that's

1 not a solution in anything else we would do in life; right?

2 MR. CHRIS TREBILCOCK: I'm not -- I don't think
3 there's anything other in life. I think we're restricted to
4 what the confines of this Board --

5 MR. HOUSKAMP: So -- so if we -- if we believe
6 that there's a problem with the form of this petition, what
7 I hear you saying is ignore it.

8 MR. CHRIS TREBILCOCK: No, not at all. That's
9 absolutely wrong. What I'm saying is that this Board, one,
10 has already reviewed the form. You want to talk about due
11 process and ignoring things, there was a chance for
12 proponent, for people who challenged this ballot initiative
13 to appear for this -- appear before this body in February
14 and make arguments why the form of our petition was
15 insufficient. Mr. Doster was here, Mr. Avers was here, Mr.
16 Koch may have been here and some of them spoke out against
17 it and challenged the form. This Board listened to those
18 concerns and voted 4-0 to approve the form of the petition.
19 They didn't bring up any abrogate problems then as they
20 could have and they didn't. Separate and apart from that, I
21 am not saying ignore it. What I'm saying is that the
22 Board's duty is to look at the four corners of the document
23 and determine whether or not it substantially complies. So
24 if this Board can sit here today and look at the form as it
25 did in February and say the proposal lists provisions that

1 are altered or abrogated which it does, then it complies
2 with the form. What Mr. Koch is arguing for is that you sit
3 as a judge and jury to then make a judicial determination as
4 Director Brater said over whether something is abrogated.
5 And I'm saying that is outside the confines of this Board.
6 But let's say you're even right, Mr. Houskamp, that it is
7 your duty. Apply the standard. Go ahead. It's -- it's --
8 it's obvious. Look at it just like you said. You go, well,
9 maybe not. You're not getting rid of election day. Look at
10 the arguments that they have on all the ones. They're just
11 as silly as election day. To say that you inserted
12 fundamental right to vote into the constitution that somehow
13 eliminates now the power of the people to bring other
14 constitutional amendments?

15 MR. HOUSKAMP: Here -- here's the problem that I
16 have and I should have just brought that up first. When I
17 read through this and I read through the challenge and I
18 look at the articles and the sections of the constitution
19 that the challenge is saying should have been in the
20 proposal to make it square. If I take those and I put them
21 into your proposal and I read it that way, your proposal
22 makes perfect sense. But if I take those articles out, the
23 argument that the challenger is making has a little more
24 weight to it. So then I come back and I say, okay, so
25 really what's happening is are -- you're missing --

1 you're -- there were some pieces that were not in the
2 proposal and that's the question I'm asking. Is -- is --
3 is -- does that -- does that -- does that invalidate the
4 form of the proposal?

5 MR. CHRIS TREBILCOCK: I think it's the Supreme
6 Court made a decision that there were provisions that were
7 abrogated that were not. That's their, the role of the
8 Supreme Court, not this Board. I would say second that
9 there are not provisions that were abrogated. I think the
10 proposal was clear and the form was already approved that we
11 listed the provisions that were ab- -- that would be
12 abrogated, if at all, by the proposal. I guess I keep going
13 back to and, you know, respectfully you're glossing over and
14 saying all five -- you're telling me that all five of the
15 challenges they say should have been listed as abrogated?
16 That they think that our proposal, we should have said we've
17 abrogated election day? If our proposal is changed, we're
18 no longer going to have that election day in this
19 constitution, that's what they're arguing.

20 MR. HOUSKAMP: What I'm saying is --

21 MR. CHRIS TREBILCOCK: That's what they argued,
22 though.

23 MR. HOUSKAMP: -- what I'm saying is, is when I
24 add -- when I add the missing articles and sections to your
25 proposal, your proposal sounds absolutely perfect. When

1 those are not there, --

2 MR. CHRIS TREBILCOCK: To quote Mr. Daunt at the
3 last hearing in February, he called the petition form
4 "beautiful." It was in the quote.

5 MR. DAUNT: I don't remember that.

6 MR. CHRIS TREBILCOCK: Maybe it was the summary.
7 You said the summary was beautiful. Maybe that's what it
8 was.

9 MR. DAUNT: Probably the sum- -- yes. Because I
10 probably wrote some of it, so -- or suggested some of it.

11 MS. BRADSHAW: I think that's --

12 MR. CHRIS TREBILCOCK: You know what? Following
13 your high school English teacher I think you did. I think
14 it was brilliant. But I -- I think the requirement, again,
15 what -- Mr. Houskamp, I think what you're -- you're
16 suggesting is that there is a -- that there is a standard
17 which the Supreme Court has directed is not the standard,
18 that you have to get a judicial determination now prior to
19 this Board approving anything, whether or not something was
20 abrogated. And, again, you know, abrogation means total
21 evisceration. If you're sitting here today telling me that
22 you believe this proposal, which over 600,000 Michigan
23 voters supported, over 500,000 valid signatures as
24 determined by the Board, that they signed something that got
25 rid of election day? Really?

1 MR. DAUNT: Can I -- I think -- there are four
2 things I think I want to address and if -- if I may. And
3 then it's a little after 1:00. I had said 12:00 -- if we go
4 past 12:30 for lunch. So I think we're going to try to wrap
5 this, this portion up and then break for lunch so that we
6 can get -- I enjoy going back and forth with you. I do
7 think I would be remiss if I didn't point out that I think
8 you are slightly misrepresenting the issue of the election
9 day. As I read it, what they're arguing is that it would
10 get rid of the single day election day requirement and make
11 it multiple days.

12 MR. CHRIS TREBILCOCK: Can we not vote -- can we
13 not vote early now? I've cast my -- I cast my vote three
14 days before the election.

15 MR. DAUNT: I'm -- and I'm -- I'm not -- I haven't
16 paid much attention to that argument. I just think that the
17 way you're phrasing it comes across is that they're saying
18 it would just get rid of election day, we wouldn't have
19 elections anymore and that's -- that's kind of what you've
20 been saying. So I don't think that is correct.

21 MS. GUREWITZ: I think it is.

22 MR. DAUNT: On three -- the three other points.
23 You've mentioned "substantial compliance." Is it not
24 "strict compliance"? Those are different terms; correct?

25 MR. CHRIS TREBILCOCK: Correct; correct.

1 MR. DAUNT: Okay. So I wanted to clarify that.
2 The issue of timing on this, I in previous meetings have
3 stated displeasure with things being brought up somewhat
4 late. I believe it was related to the word "the." It was
5 annoying, it was frustrating, but also important points were
6 made that, well, you know what, this was discovered before
7 anything had been done, before decisions had been made, it's
8 our duty to address them. So I think that though
9 frustrating, we should strive to get it right. And then the
10 issue of the previous approval to form with the Board then
11 determining that there was an abrogation issue which they
12 thought was form or certain members thought was form, that
13 was part of that case in '12. And I have in slight text
14 here -- and I'm not saying Mr. Grill is misleading at all.
15 I just -- and this is why I was confused. It says, "The
16 Board of Canvassers" -- this is from the Court of Appeals
17 case.

18 MR. CHRIS TREBILCOCK: Can I -- can I just ask who
19 sent that to you?

20 MR. DAUNT: Sure. Mr. Avers did.

21 MR. CHRIS TREBILCOCK: Okay. Mr. Avers in the
22 audience sent that to you. Okay.

23 MR. DAUNT: "The Board of Canvassers had
24 previously approved the form of the petition and the
25 Director of Elections found that there were sufficient

1 valid signatures to qualify the proposal. However, the
2 Board of Canvassers subsequently deadlocked on whether
3 the petition should be placed on the ballot with two
4 members voting to place the proposal on the ballot and
5 two members voting not to place the proposal on the
6 ballot. Under the statute the proposal therefore did
7 not qualify for the ballot."

8 And so that -- that was my recollection of what I
9 had read about that specific form issue was raised after
10 initial form approval had been given. Because I don't --
11 like I said, I don't want to be just making things up on the
12 fly. There needs to be a conflict and some evidence
13 pointing to a conflict which I think that provides. So I --
14 I wanted to state I knew I wasn't crazy thinking that that
15 had been an issue as well as the issue of timing, that
16 though frustrating, I think it's up to us to address it when
17 it is brought to our attention.

18 MR. CHRIS TREBILCOCK: Right. And I do find it
19 ironic that Mr. Avers who spoke out in February and spoke to
20 the form issues in February, didn't bring or raise that
21 issue in February.

22 MR. DAUNT: And just like the issue with the word
23 "the," it is frustrating that things are not brought up.
24 But when they are noticed and we haven't made a decision, I
25 think it's important that they are addressed.

1 MR. CHRIS TREBILCOCK: But --

2 MR. DAUNT: We probably disagree on that, but --

3 MR. CHRIS TREBILCOCK: I think there's a
4 difference because ballots weren't about to go in the mail.

5 MR. DAUNT: Well, it -- Mary Ellen?

6 MS. GUREWITZ: I do note that Mr. Koch's challenge
7 did say that the election day provision was rendered wholly
8 inoperative, was totally abrogated. So, and what he has
9 also said is that four other provisions of the constitution
10 are wholly abrogated. That the ability to -- and I think
11 he's wrong when you say that. I think he's wrong, but I'm
12 basing that on my legal analysis of this issue of how I put
13 together the proposal and what is already in the
14 constitution. So it's hard because I think that's not our
15 role to put together the various pieces of the constitution
16 with regard to this alter and abrogate. So it's -- it's
17 complicated and we are -- sort of complicated I think
18 between form and content. And I -- we recognize that it's
19 our obligation to determine whether the form is correct, but
20 we are not supposed to be, we don't have the statutory
21 responsibility or right to engage too much with the content
22 of the proposal. And I think what -- in the guise of
23 supposedly challenging the failure to alter and abrogate, I
24 think what the challenger is doing here is asking us to
25 engage in a lot of interpretation of the provision which I

1 don't think we -- which I believe we are not supposed to be
2 doing. I don't know if I'm clear on that.

3 MR. DAUNT: Which, and that -- that was an
4 important piece for me of understanding precedent, how had
5 that been addressed in the past. And on the election day
6 issue, I -- what -- what I'm saying -- I'm rejecting that
7 argument, number one. I just -- I don't think it provides,
8 you know, they --

9 MR. CHRIS TREBILCOCK: So you agree with me?

10 MR. DAUNT: I'm not going to say that.

11 MR. CHRIS TREBILCOCK: Come on.

12 MR. DAUNT: But I think the way you're phrasing it
13 to me seemed like you were -- you were making it sound as
14 though they were saying "election day is over. We're no
15 longer going to have any more -- we're not going to vote
16 anymore." But I under --

17 MR. CHRIS TREBILCOCK: So -- so the constitution
18 says by -- by -- the text of the constitution says the
19 election day shall be -- what? -- the first Tuesday in
20 November.

21 MS. BRADSHAW: After the first Monday.

22 MR. DAUNT: After the first Monday.

23 MR. CHRIS TREBILCOCK: After the first Monday,
24 yeah. After the first Monday.

25 MS. BRADSHAW: First full week.

1 MR. CHRIS TREBILCOCK: Abrogate means totally
2 eliminate and make it inoperative which would mean that day
3 goes away. So what other way to read that argument than to
4 say we're eliminating election day?

5 MR. DAUNT: You were referencing it as though it
6 was elections all together. That's how I interpret it and
7 that's why I wanted to push back against it. That's --

8 MR. CHRIS TREBILCOCK: I thought I was saying --
9 I'm pretty sure I said we're getting rid of election day. I
10 think that's what I've said repeatedly. But --

11 MR. HOUSKAMP: But there were more. There were
12 five items in there.

13 MS. GUREWITZ: Right.

14 MR. CHRIS TREBILCOCK: Yeah. And I think each one
15 of them are just as absurd as that. I mean, they led with
16 that which you have to assume is their strongest one and
17 then they didn't even bring up the rest. They go with --
18 they go with that we're totally rendering inoperative the
19 legislature's authority under Article 2, Section 2, which
20 goes to qualifications. Which if you read Article 1 --
21 Article 2, Section 1, says here are the qualifications and
22 as prescribed -- accept as otherwise prescribed in the
23 constitution. That "otherwise prescribed by" means it's
24 subject to Article 2, Section 2. So that's a qualification.
25 We don't touch qualifications. We say qualified electors in

1 the proposal. You follow?

2 MR. HOUSKAMP: I do follow.

3 MR. CHRIS TREBILCOCK: Okay. So that's why even
4 if you -- even if -- even if you're in the camp of look, we
5 can -- we can sit in the shoes of the Supreme Court or we
6 can make judicial determinations on abrogate, apply the
7 standard. I welcome you to. Because if you apply the
8 standard, their five challenges, you give them a read and,
9 like I said, a simple Yooper like me can read it. There is
10 no way that these provisions are rendered wholly inoperative
11 or are completely eviscerated which means essentially
12 written out of our constitution by this proposal. This
13 should be a non-issue. Okay? They didn't come here
14 challenging whether or not we got enough signatures. They
15 didn't -- they're not challenging that it's unclear where
16 there was some other error, the union bug font wasn't the
17 right size, you know. Abrogate. That we completely
18 eliminated sections of our constitution, five of them, and
19 failed to list them. I think you can tell from this debate
20 whether or not something's eviscerated. I think that by
21 very definition shows that these things hadn't been
22 eviscerated. Smart, intelligent people can have honest
23 disagreements about whether that has been abrogated or not.
24 And if that's the case, something has not been clearly
25 eviscerated under the standard set by the Supreme Court.

1 So for those reasons, the form complies with the
2 statute. We have submitted tens of thousands and more
3 qualified voter signatures in support of this proposal. Let
4 the people vote on this proposal.

5 MR. BRATER: If I could just ask if the AG's
6 office would like to further clarify the process just
7 because there's been so much back and forth on it?

8 MR. GRILL: Under the Protect Our Jobs decision
9 which has been quoted extensively today already, the first
10 part of it would be what is the meaning of alter or
11 abrogate? And the court's conclusion on that reads as
12 follows:

13 "An existing provision is only 'altered or
14 abrogated if the proposed amendment would add to,
15 delete from, or change the existing wording of the
16 provision, or would render it wholly inoperative.'"

17 At the end of the opinion the court also provides
18 some examples of when something is or is not altered or
19 abrogated. Noting in one of the -- in the -- I'll just read
20 all five.

21 "When the existing language of a constitutional
22 provision would be altered or abrogated by the proposed
23 amendment, republication of the existing provision is
24 required. The language of the amendment" -- number
25 two. "The language of the amendment itself, rather

1 than how the proponents or opponents of the amendment
2 characterize its meaning, controls whether an existing
3 provision would be altered or abrogated by the proposed
4 amendment." Number three, "When the existing language
5 of a constitutional provision would not be altered, but
6 the proposed amendment would render the entire
7 provision or some discrete component of the provision
8 wholly inoperative, abrogation would occur and
9 republication of the existing language is required."
10 Number four, "When the existing language would not be
11 altered or abrogated, but the proposed amendment would
12 only have an effect on the existing language, and the
13 new and existing provisions can be harmoniously
14 construed, republication of the existing provision is
15 not required." And number five, "When the existing
16 language would not be altered or abrogated, but the
17 proposed amendment would only have an effect on the
18 existing language, thereby requiring that the new and
19 existing provisions be interpreted together,
20 republication of the existing provision is not
21 required."

22 MR. DAUNT: Thank you, sir. Other questions?

23 MR. CHRIS TREBILCOCK: Hopefully that's not where
24 any of you fell asleep while reading my challenge because I
25 restated that.

1 MR. HOUSKAMP: No. I stayed awake for that.

2 MR. CHRIS TREBILCOCK: Because I restated that.

3 MR. HOUSKAMP: It was late at night, though.

4 MR. CHRIS TREBILCOCK: Were you awake for that
5 part?

6 MR. HOUSKAMP: Out of deference to you it was very
7 late at night.

8 MR. CHRIS TREBILCOCK: All right. All right.

9 MR. HOUSKAMP: If you had put pictures in, that
10 would have --

11 MS. BRADSHAW: Illustrations. Mr. Chair, I do not
12 have any further questions.

13 MR. DAUNT: Okay.

14 MS. GUREWITZ: I don't have any further questions
15 of Mr. Trebilcock.

16 MR. JONATHAN KOCH: May I have a quick rebuttal?

17 MR. DAUNT: Two minutes, yes.

18 JONATHAN KOCH

19 MR. JONATHAN KOCH: The purpose of the alter and
20 abrogate and republication requirement is, quote, "to advise
21 the elector as to the purpose of the proposed amendment and
22 what provisions of the constitutional law it modifies or
23 supplants." That is not something that can be dealt with
24 after the election. That is something that has to be dealt
25 with now. It is part of the form of the petition required

1 by statute, MCL 168.482(3). The statute says "shall." That
2 is mandatory which means it is subject to strict compliance,
3 not substantial compliance.

4 The other examples of challenges that can be
5 raised afterwards, single object are not form challenges.
6 They are substantive challenges. Alter and abrogate is not
7 saying that it's a good idea or a bad idea to do what the
8 petition does. It's saying that they -- the form of the
9 petition does not include the list of constitutional
10 provisions that would be altered or abrogated. And just to
11 reiterate in Protect Our Jobs, there was a petition filed,
12 it was approved as to form, the Board subsequently
13 deadlocked. There was enough signatures, the Board
14 deadlocked and that was the complaint for mandamus that was
15 dismissed which means the courts rejected the challenge and
16 allowed -- or upheld the Board's non-action and did not
17 force it to be on the ballot.

18 MR. DAUNT: Okay. Thank you.

19 MR. CHRIS TREBILCOCK: Thirty seconds? I note
20 your patience, 30 seconds.

21 MR. DAUNT: I got a 12-year-old daughter. I got
22 lots of patience.

23 MS. GUREWITZ: Somebody always have to have the
24 last word.

25 CHRIS TREBILCOCK

1 MR. CHRIS TREBILCOCK: Mine's 13. Oh, my
2 goodness. I just -- I wanted to go back and just clarify or
3 make a fuller response to Mr. Houskamp on what could happen
4 in terms of -- and I mentioned that if the Board deadlocks,
5 that we could go to court or vote no. We could go to court
6 to put it on. Well, I just wanted to clarify that if the
7 Board votes to approve and certify it for the ballot, Mr.
8 Koch and his client could go to court and say that, no, you
9 were wrong. It shouldn't have been certified. So I just
10 wanted to clarify that point as well.

11 MR. HOUSKAMP: Since you're clarifying, can I ask
12 you to clarify one more piece of that? If this -- if this
13 ended up in front of the Supreme Court to address this
14 issue, whether it was form, whether it wasn't form, whether
15 it abrogated, whether it didn't, if this were heard by the
16 Supreme Court right now to answer this question, would they
17 in fact weigh in on whether these -- on whether these were
18 abrogations, whether these were -- how -- how far down the
19 road do they go?

20 MR. CHRIS TREBILCOCK: Well, if I could predict
21 what our Supreme Court was doing, I could triple my hourly
22 rate for sure.

23 MR. HOUSKAMP: Okay. So that's -- that's --
24 that's -- so I'm asking you a question that's not a --

25 MR. CHRIS TREBILCOCK: But generally -- generally

1 they would weigh in on whether or not there was a clear,
2 legal duty for -- for this Board to certify or not. They
3 could very easily punt and say "no, we're not going to get
4 into whether or not Mr. Koch is right or wrong on that until
5 the people vote." They could kick it then and then there
6 would be another lawsuit. So, again, I don't -- like I
7 said, if I could predict what our Supreme Court was going to
8 do I could charge a heck of a lot more.

9 MR. HOUSKAMP: Well, thanks for answering that,
10 though.

11 MR. CHRIS TREBILCOCK: Yeah. Thank you.

12 MR. DAUNT: Jonathan, you want -- you want 15
13 seconds or -- no. Dammit. I'm kidding.

14 MR. JONATHAN KOCH: I clerked for Justice Viviano,
15 not Justice Zara.

16 MR. DAUNT: All right. Thank you. I would -- are
17 there other questions or --

18 MS. BRADSHAW: No.

19 MR. DAUNT: Okay. I guess it would be time for a
20 motion of some sort.

21 MS. GUREWITZ: I would like some further
22 discussion and not questions to the advocates. But I
23 thought that the challenge was creative that Mr. Koch was
24 desperately trying to find something where he could argue
25 that the proposal abrogated provisions. And it seemed to

1 me, as it does to Mr. Trebilcock, pretty silly in fact to
2 suggest that the ability to -- of the citizens to initiate
3 constitutional amendments is abrogated by this proposal, or
4 that election day is totally removed, or that the
5 legislative powers of the County Boards of Supervisors are
6 eliminated, abrogated, totally inoperative. A, they don't
7 have any. But if they had any, this would not preclude them
8 from exercising whatever powers they have. And so what I'm
9 saying is that I think that the legal argument, if I were
10 called upon as a Michigan Supreme Court justice, if I were
11 called upon to say whether the alter and abrogation argument
12 is valid, I would say it's not but I don't think that's for
13 us. I think that what we're supposed to be doing is saying
14 are there sufficient chall- -- sufficient number of
15 signatures and on that question I think we know the answer.
16 Whether the alter and abrogation argument is -- it's a legal
17 argument, as Director Brater has said, and it's not one for
18 us to address, nor is it one that would preclude us from
19 saying that there are a sufficient number of signatures.

20 MR. DAUNT: So I -- thank you. I think I disagree
21 with some of that in the terms of -- well, where I agree is
22 the signatures are -- they have enough signatures. That's
23 not at issue. That's not the only thing we're asked to
24 address. The staff has done remarkable work looking through
25 these in a timely fashion. Ultimately looking back at past

1 practice of this Board, despite form approval being given,
2 when something is brought to the attention that is a form
3 issue, this Board has disagreed among themselves, the court
4 has taken it up, and the court has not said you can't deal
5 with this. That "this is not a form issue, you should not
6 deal with it." That to me is enough to take seriously this
7 issue of alter or abrogation because if it is addressing an
8 issue that the public is supposed to be voting on, that they
9 will be voting on, if it is not clear what they are voting
10 on, that is a detriment to the voters of the state. That to
11 me is an important issue and I will -- I really hope that
12 the Court can provide some clarity on the issue of form and
13 when it can be addressed as well as this for sure or for
14 sure not being a form issue. Because it's not pleasant to
15 sit up here and have arguments thrown at you and you have to
16 make a determination on which one are you going to believe.
17 Ultimately I think if there is a question of what is before
18 the voters, they should know that before it is placed before
19 them.

20 MS. BRADSHAW: Chairman Daunt?

21 MR. DAUNT: Yes.

22 MS. BRADSHAW: And I know that you have said that
23 the Court would -- should make that determination and you
24 and I were both on this Board when this petition came before
25 us and I know that you want to have answers and solutions

1 for this, but I do feel that there are a lot of questions
2 even for the four of us on this Board and there are a lot of
3 questions out here that I feel are more legal questions that
4 should be -- we should be given -- that would allow for a
5 judge to basically -- and may I also remind everyone that we
6 do not have promulgated rules for this Board. I'm sorry. I
7 had to put it in there again. We -- we went to get them,
8 and then we were deadlocked on getting promulgated rules for
9 this Board. Myself and my previous democrat voted to move
10 to go to those rules and the former chair and the previous
11 member decided no.

12 With that, though, I feel that it is a legal
13 question. I am not a lawyer. I know we have one on the
14 Board, but I am not a lawyer. So I will make the move -- I
15 move that the Board of State Canvassers accept the staff
16 recommendation to -- and find the petition submitted by
17 Promote the Vote 2022 sufficient.

18 MR. DAUNT: We have a motion. Do we have support?

19 MS. GUREWITZ: Support.

20 MR. DAUNT: Okay. We have a motion, we have
21 support. Are -- is there further discussion on this?

22 MR. HOUSKAMP: I just -- I have just one
23 closing -- closing piece on the discussion. I still have
24 this fundamental problem. We've got all these signatures,
25 but I have this fundamental problem that what we -- what we

1 got the signatures on, what we presented to them and what we
2 told them was the story was not the full story. There were
3 pieces that were missing. You know, again, I'm not an
4 attorney and so I really truly am not. I keep telling you
5 guys that. But I -- but I'm really good at doing partial
6 stories. I do them with my wife all the time. If I want to
7 do something and I'm clever, I -- I -- I am very selective
8 about what part of the story. The more important it is, the
9 more selective. And I have that -- I have that same feeling
10 that that's part of what's been put to the people signing
11 this petition and I'm not hearing anything that's telling me
12 that that wasn't the case. I -- but I --

13 MS. GUREWITZ: Yeah. One -- I don't think that
14 the petitioner, the sponsors, have any reason to hide
15 anything.

16 MR. HOUSKAMP: No, I don't think it was
17 deliberate.

18 MS. GUREWITZ: No. But -- no. But they have no
19 way, in fact, they need to look through and I know they did
20 with a number of very, very good constitutional lawyers, to
21 see how is -- and that's what any petition sponsor does
22 because it's important to say these are the other provisions
23 that are affect -- that are affected by this, that are
24 either altered or abrogated, that is totally eliminated. So
25 that is something that is done in advance. What we are

1 doing here -- what we're asked to do today, I think, is to
2 determine whether it's sufficient. If in fact we did
3 determine that there are sufficient numbers -- that the
4 petition is sufficient based upon the number of signatures
5 and if we decided as well that there was a legal issue which
6 we're not going to address, as Mr. Trebilcock said, if there
7 are people who believe or ballot question -- ballot opposers
8 who want to take this to the Court, they could do it
9 tomorrow. And before the people were called upon to vote,
10 the Supreme Court would make a decision about that. So what
11 is presented to the electorate before it is presented, that
12 alter or abrogate issue could be decided if it were a
13 serious issue. I don't think it is, but it would be
14 decided. You would not be presenting to the electorate a
15 proposal which had implications or effects of which they
16 were unaware.

17 MR. HOUSKAMP: Okay.

18 MR. DAUNT: Okay. Discussion? Okay. I guess
19 that would mean we have a motion, we have support, it would
20 be time for a vote. And all those in favor of the motion as
21 stated say "aye."

22 MS. BRADSHAW: Aye.

23 MS. GUREWITZ: Aye.

24 MR. DAUNT: All those opposed? Aye.

25 MR. HOUSKAMP: You say "aye" for opposed?

1 MR. DAUNT: Or nay.

2 MR. HOUSKAMP: We do "nay" for opposed?

3 MR. DAUNT: Nay. Nay for opposed.

4 MR. HOUSKAMP: I would vote nay.

5 MR. DAUNT: Nay. We deadlock at 2-2.

6 (Whereupon motion denied at 1:34 p.m.)

7 MR. DAUNT: I do want to state I do not believe
8 that it was deliberate, but I believe that the importance of
9 people knowing what is before them is worthy of decision
10 before it gets to them. So I -- if -- yeah; yeah. Would,
11 again, ask folks not to -- not to demonstrate, to applaud.
12 You've done a good job of that thus far mostly. I do have a
13 question before we recess for lunch. Because I think I
14 speak for myself and Board Member Housman (sic), abide by
15 whatever it is the Court's decide. That's not at issue.
16 Should we proceed with the assignment of number and
17 consideration of the 100-word summary so that that is taken
18 care of when the Court completes its action or should we
19 hold on that?

20 MR. BRATER: I would recommend that we do that
21 because the Court, if the Court does overturn this Board,
22 they may give the Board very little time to implement that.
23 And so as much as the Board can get off its plate before
24 that happens, I think the Board should do.

25 MR. DAUNT: Okay. Thank you, sir. Then in that

1 case I would like us to take up numbers -- number five at --
2 number five agenda item, assignment of the number
3 designation for the constitutional amendment sponsored by
4 Promote the Vote 2022, and then we can break for lunch and
5 address the rest of the items.

6 MS. BRADSHAW: Chairman Daunt, if it's okay if I
7 make the motion?

8 MR. DAUNT: Yup.

9 MS. BRADSHAW: I don't think we need to have a
10 discussion about this one.

11 MR. DAUNT: Yeah, I think that --

12 MS. BRADSHAW: We've done this one before. And
13 just so everyone understands, we do have to make a motion to
14 designate what this would be on the ballot. So I move that
15 the Board of State Canvassers designate that the
16 constitutional amendment submitted by Promote the Vote 2022
17 as proposal 2022 -- 22-2, sorry, on November 8th, 2022
18 general election ballot.

19 MR. HOUSKAMP: I'll second it.

20 MR. DAUNT: We have a motion and support. Any
21 discussion? All those in favor of the motion signify by
22 saying "aye."

23 ALL: Aye.

24 MR. DAUNT: Any opposed? Motion carries 4-0.

25 (Whereupon motion passed at 1:36 p.m.)

EXHIBIT 7

BOARD OF STATE CANVASSERS MEETING

September 27, 2021

Prepared by



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STATE OF MICHIGAN
 DEPARTMENT OF STATE
 JOCELYN BENSON, SECRETARY OF STATE
 BOARD OF STATE CANVASSERS MEETING
 7710 West Saginaw Highway, Lansing, Michigan
 Monday, September 27, 2021, 9:30 a.m.

BOARD: MR. NORMAN SHINKLE - Chair
 MR. ANTHONY DAUNT - Board Member
 MS. JEANNETTE BRADSHAW - Board Member
 MR. JONATHAN BRATER - Elections Staff
 MR. ADAM FRACASSI - Elections Staff

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TABLE OF CONTENTS

| | PAGE |
|--|------|
| 1. Consideration of meeting minutes for approval (September 23, 2021) | 3 |
| 2. Consideration of the form of the initiative petition submitted by Secure MI Vote | 5 |
| 1. Chris Trebilcock | 6 |
| 2. Robert Avers | 13 |
| 3. Such other and further business as may be properly presented to the Board. | 20 |

1 Lansing, Michigan

2 Monday, September 27, 2021 - 9:32 a.m.

3 MR. SHINKLE: This is a scheduled meeting of the
4 Board of Canvassers that was scheduled last Thursday because
5 we had some problems with typos on the petition language and
6 the printer affidavit got the name of the outfit wrong.
7 Jonathan, take it over.

8 MS. BRADSHAW: Don't we have to approve the
9 minutes of the previous meeting?

10 MR. BRATER: Yes.

11 MR. SHINKLE: Were we properly noticed? Let's
12 start with that.

13 MR. BRATER: Oh. This meeting was properly
14 noticed under the Open Meetings Act.

15 MR. SHINKLE: Okay. Properly noticed. First
16 thing on the agenda is minutes of the last meeting we have
17 in front of us. What's the Board's pleasure?

18 MS. BRADSHAW: Mr. Chair, I would like to make a
19 motion to amend the minutes of the last meeting.

20 MR. SHINKLE: Yeah, just tell us what you want to
21 amend. It'll be friendly.

22 MS. BRADSHAW: Yup, Board action on agenda items.
23 "The Board determined that the initiative petition that was
24 submitted by Secure MI was not to form due to printer's
25 affidavit not included. It was included, but it was --

1 there was an error on the printer's affidavit.

2 MR. SHINKLE: Where are you reading right now?

3 MS. BRADSHAW: Under "Board Action" on agenda
4 item.

5 MR. SHINKLE: The Board approved the 100-word
6 summary.

7 MS. BRADSHAW: Nope. Second page.

8 MR. SHINKLE: Board action on agenda item.

9 MS. BRADSHAW: Not included. But it was included,
10 it was just incorrect.

11 MR. DAUNT: So we can just say it was not to form
12 due to printer's affidavit containing typographical errors?
13 So remove "not included and"; is that right?

14 MR. BRATER: Well, there were errors on the
15 printer's affidavit and on the language on the petition.

16 MS. BRADSHAW: So maybe if we have Secure MI Vote
17 was not to form due to incorrect printer's affidavit and
18 typographical errors?

19 MR. SHINKLE: There you go. "Incorrect printer's
20 affidavit and typographical errors" takes the place of
21 "printer's affidavit not included and typographical errors."
22 That whole last part of the sentence is replaced with what
23 we've said. Further discussion on the minutes as they have
24 been corrected? Seeing none, all those in favor of the
25 motion signify by saying "aye."

1 ALL: Aye.

2 MR. SHINKLE: All those opposed? It passes.

3 (Whereupon motion passed at 9:34 a.m.)

4 MR. SHINKLE: Now we're on why we are here today

5 and, Jonathan, take it away.

6 MR. BRATER: I'm sorry. Just to -- just -- sorry.

7 On the previous item I don't believe there was a second on

8 the motion.

9 MS. BRADSHAW: Yeah, needed a second on that.

10 MR. BRATER: We need a second on the motion to

11 approve the meeting minutes.

12 MS. DUNN: Okay.

13 MR. SHINKLE: Moved by Jeannette, seconded by

14 Tony.

15 MR. FRACASSI: I didn't hear.

16 MR. BRATER: Oh, sorry.

17 MR. DAUNT: No, I didn't --

18 MR. SHINKLE: Do you want us to re-vote?

19 MR. BRATER: No, if -- no.

20 MR. SHINKLE: Oh, okay. Just got to keep the

21 minutes appropriate for the next meeting. Jonathan, you got

22 the printer's affidavit. We got the typos out; is that

23 correct?

24 MR. BRATER: That is correct. We got a new

25 petition that has -- and had corrected the errors that were

1 identified we reviewed. It's otherwise correct. And the
2 printer's affidavit has been received and is also correct.

3 MR. SHINKLE: I don't have any blue cards from
4 anybody. Oh, there's a blue card.

5 MS. BRADSHAW: He's working his blue card.

6 MR. SHINKLE: He's got his own. He bring it up in
7 person.

8 MR. CHRIS TREBILCOCK: Oh, they just handed them
9 out.

10 MR. SHINKLE: Pretty special, Chris. Take it
11 over. Just stand right up there at the old microphone
12 and -- for the record, Chris Trebilcock is going to talk to
13 us.

14 CHRIS TREBILCOCK

15 MR. CHRIS TREBILCOCK: Good morning everyone.
16 Good to see you again. Chris Trebilcock on behalf of
17 Protect MI Vote. I've said it before, but I'll say it again
18 which is the process of approving this form lacks
19 fundamental due process. There's case law in contested
20 hearings such as this that there has to be adequate notice
21 given to the public and an opportunity to review things so
22 that meaningful debate and objection can occur. The revised
23 petition summary and printer's affidavit was posted late or
24 sometime mid-afternoon on Friday and here we are Monday
25 morning. That's less than one business day's notice. I

1 find that objectionable and I think that lacks adequate
2 fairness to the public and to opposing ballot committees and
3 in this case, why rush? The real deadline for this is not
4 until next July and more time should have been given. And
5 quite frankly, I think it might have helped out the
6 proponents because at least on the petition that was filed
7 online, there are still errors in the form of the petition.
8 What was posted online -- and I'm not going to detail all of
9 them, but the most glaring is the summary exceeds 100 words.
10 What was submitted has a repeat of what the original summary
11 was and then deletes and didn't delete the old version of
12 it. So maybe you guys have something different, but what
13 the public was provided notice of and what was posted
14 online -- and if you look up online right now, what you pull
15 up online has the language and the summary that the Board
16 approved last week and the original summary that was
17 submitted by Secure MI Vote.

18 MR. DAUNT: This is online where?

19 MR. CHRIS TREBILCOCK: On the web site. On your
20 web site, Board of Canvassers' web site. Pull it up right
21 now and it's got -- and it's stamped by the Secretary of
22 State's Office by the Bureau of Elections.

23 MR. SHINKLE: Okay, you guys, he's accusing you of
24 making a mistake here.

25 MR. CHRIS TREBILCOCK: No, I don't think it's

1 their mistake. I think it's the Secure MI Vote made another
2 error.

3 MR. DAUNT: Everything we have is to form as to
4 what has been discussed at our last meeting.

5 MR. SHINKLE: Well, maybe you got that
6 electronically. Is what we got in front of us 100 words?

7 MR. CHRIS TREBILCOCK: Can maybe the public see
8 what you guys have since nobody else has seen it?

9 MR. BRATER: Everyone has seen what the Board has.
10 I don't know what Mr. Trebilcock is talking about. The
11 summary that's posted online is exactly the same thing that
12 you have in front of you and it doesn't have --

13 MR. CHRIS TREBILCOCK: If you click -- if you
14 click on the link of the Secure MI Vote petition, the top
15 link, when you pull it up, there is two -- two summaries
16 that come up.

17 MR. BRATER: Sure.

18 MR. FRACASSI: Can I ask a question?

19 MR. CHRIS TREBILCOCK: Yeah; yeah; absolutely.

20 MR. FRACASSI: Are you referring -- what are --
21 are you referring to -- so it says, "Initiation of
22 legislation," underneath that it says, "A petition to
23 initiate legislation to amend the Michigan Election Law."
24 Is that what you're talking about?

25 MR. CHRIS TREBILCOCK: Yeah, the summary. There's

1 two summaries and the version I pulled up this morning, two
2 summaries came --

3 MR. FRACASSI: There's one in size 12 font and
4 then one in size 8 font?

5 MR. CHRIS TREBILCOCK: Correct.

6 MR. FRACASSI: That 8 -- petition inside the 8
7 font is mandatory to be there because it has to provide the
8 titled codes, the section of codes. That's not the petition
9 itself.

10 MR. CHRIS TREBILCOCK: And so it repeats it twice
11 in the summary?

12 MR. FRACASSI: That's not the summary.

13 MR. CHRIS TREBILCOCK: Okay. What is that then?

14 MR. FRACASSI: It's a different part that has to
15 be on there.

16 MR. CHRIS TREBILCOCK: Okay. Maybe I'm wrong on
17 that, but that sure looks like two summaries on there.

18 MR. SHINKLE: Good defense over there, staff.

19 MR. CHRIS TREBILCOCK: Yup. I stand corrected.
20 But I do, the second point I would make is I find it ironic
21 that the committee that wants to hold voters that if they
22 get an error, that they have to show up in person to correct
23 or show an ID and I don't see Mr. Spies here. Apparently he
24 couldn't show up in person and find the time to show up in
25 person to correct and address any concerns that might be

1 with this form that was resubmitted. I find that quite
2 ironic that apparently there are rules for thee, but not the
3 GOP who is -- who is pushing forward this proposal.

4 The other error that again -- and I'll raise this
5 and preserve it -- is that there is no congressional
6 district listed on the form. Under current law we think
7 there is required to be a congressional district and they
8 have to collect from certain percentages of congressional
9 districts. Now, that's subject to litigation. But, again,
10 this ballot committee could voluntarily comply with that
11 requirement. But, again, that was a proposal pushed by the
12 GOP and again they have rules for everybody else, but
13 they're not following them themselves and they voluntarily
14 could, but they're choosing not to. So again it appears to
15 be rules for them or rules for thee but not the GOP.

16 Finally, I just, I think it's important that when
17 we talk about -- I know -- I know we're sometimes we're
18 casual because we've been in front of each other so much and
19 things like that and try to keep it personal and things like
20 that. But I think this Board does have just such an
21 important role in our election process that I hope that
22 we're not rushing through things and that's why I think, you
23 know, for example, maybe I would have looked at that a
24 little closer and been able to have an opportunity to call
25 up staff and say, "Hey, this looks to me to be like a repeat

1 of the summary and they look to be different." But because
2 this process gets rushed through and it gets posted on a
3 Friday afternoon and then we've got a meeting here first
4 thing in the morning, I'm looking at it five minutes before
5 we get on the road, it's not done. So, again, I just think
6 this process and this ballot proposal is being pushed
7 through quickly for no good reason other than political
8 ends. And so for that I would encourage to give the public
9 enough time to review this closely and delay this vote.

10 MR. DAUNT: So I just -- I think it should be
11 noted that the staff has worked incredibly hard to get this
12 stuff done in a timely fashion. Enjoyed sparring with you
13 on occasion. There simply is not a rush here. This is --
14 we're back here because we all agreed to handle some
15 important mistakes that were made by the Secure MI Vote
16 folks in terms of the printer's affidavit and the typo, you
17 know, formatting errors on the petition. And so I just -- I
18 completely -- I think we -- I can't speak for everybody, but
19 I would reject the idea that this is being rushed. We're
20 here to handle things that we discussed doing under
21 condition, approving under condition of these being fixed
22 and we thought it was important enough to bring them back
23 and make sure that they got it right.

24 MR. SHINKLE: Chris, on Thursday we said we're
25 going to approve this conditionally and then that slowed

1 down, but exactly what we said we were going to do we're
2 doing now. So it was all obvious last Thursday.

3 MR. CHRIS TREBILCOCK: No, I -- and just to be
4 clear, I'm not objecting -- I understand, look, the staff
5 works incredibly hard and they do it and they turn it around
6 and you guys did exactly what you said you were going to do.
7 My objection is that when the form of the petition that
8 parties have an opportunity to object to isn't made
9 available, is made available to the public on less than a
10 one-business day notice, that's what I object to, not that
11 your process. And the other thing I do find it ironic that
12 you'll conditionally say something's okay assuming that it
13 will be corrected and yet this -- this proposal itself says
14 we won't count a vote even if the person is actually
15 registered and voting where they're supposed to unless they
16 come back and actually prove it. I find that ironic.

17 MR. SHINKLE: ID, it's called ID, yeah. Chris,
18 thanks for coming in.

19 MR. CHRIS TREBILCOCK: All right.

20 MR. SHINKLE: Anybody else who's going to testify
21 today?

22 MR. CHRIS TREBILCOCK: Thank you.

23 MR. SHINKLE: We have somebody here -- you're
24 welcome -- that represents Secure The Vote. Come on up
25 and -- oh, you have a blue card. Everybody is bringing me

1 blue cards personally. This is great. Personal service.
2 Boy, Mr. Avers, I can't read this. What's your name just
3 for the record?

4 MS. BRADSHAW: Wow.

5 MR. ROBERT AVERS: Good morning. Robert Avers
6 here on behalf of Secure MI Vote.

7 MR. SHINKLE: Okay.

8 ROBERT AVERS

9 MR. ROBERT AVERS: I just wanted to thank the
10 Board for your willingness to meet again on such short
11 notice. Obviously also thanks to Secretary Benson's staff
12 for helping us address the typos and turning around the
13 documents, you know, so promptly. So other than that, I
14 have nothing else. I just wanted to let you know I'm here
15 to the extent you --

16 MR. SHINKLE: And just for the record, you are a
17 licensed attorney in the state of Michigan?

18 MR. ROBERT AVERS: That's correct.

19 MR. SHINKLE: I'm supposed to ask that. I knew
20 Chris was, but this is kind of the first time you've been
21 here in awhile. So, okay. Thank you, Mr. Avers. Question?
22 Any questions for Mr. Avers?

23 MS. BRADSHAW: Not for --

24 MR. SHINKLE: Okay. Thanks a lot.

25 MS. BRADSHAW: Thank you. No, I just have --

1 actually, I have a question --

2 MR. SHINKLE: Sure.

3 MS. BRADSHAW: -- for staff to Mr. Trebilcock's
4 point though. Is normally looking at the last couple of
5 initiation of legislations that we've had, it'll say
6 something like, "For the full text of the proposed
7 initiation" instead of saying "a petition to initiate
8 legislation." So I understand why there would be this
9 question of it was a duplicate. Does that make sense?
10 Because I'm looking -- I pulled up the last three. I pulled
11 up Unlock Michigan, I pulled up Fair and Equal Michigan, and
12 they all state -- instead of saying a petition of initiated
13 legislation, it says "for a full text of." And I just --
14 I'm curious of -- because that drew my eye as well which
15 I'm -- I'd like to state this. It was very apparent at the
16 last meeting and at most meetings regardless of the content
17 of the legislation that when people -- when we have
18 organizations come up for initiation of legislation we are
19 rushed. And what I mean is that it's here, take this, look
20 at it and we don't have sometimes enough time to really
21 allow the public to look at it. Noticing this is not the
22 first time I've noticed a printer affidavit issue -- and
23 thank you for correcting that -- but we do play an important
24 role on this Board and I want to state today I do not like
25 the "accept with conditions." I feel if we are approving a

1 form to form, if you're approving it to form, we need to
2 have the actual form and if they want a 100 -- if that
3 100-word summary is included, that that means we have a
4 separate meeting to approve it to form with the actual
5 wording on top of it. I know that's an extra meeting, but I
6 feel that we need to take that extra step to protect this
7 process. We do not have promulgated rules. I don't want to
8 get in that conversation, but we don't. We have procedure
9 for this Board. I've been on this Board long enough and
10 watched the changes and I sit quietly and notice, but we
11 really need to take our time to make sure that we are
12 protecting the citizens of Michigan's right to initiate
13 legislation and we need to be fair and equal to every party
14 that comes in.

15 Now, I'm sure everyone knows I don't like this
16 petition. There are a number of petitions that come in
17 front of here, but my role on this Board is to do the duty
18 and that is to make sure that this product is to form before
19 it goes to a voter, a registered voter to sign. I just -- I
20 cannot stress that enough and make conditional -- I will not
21 approve any conditionals anymore because you don't know.
22 It's kind of me telling my kids, "Don't do this," "Oh, we
23 won't do it again" but they do it. But I just feel that,
24 you know, this petition, any petition, it needs to be the
25 correct form before we approve it. But I -- like I do

1 question this sentence, though, because if I'm looking at
2 all the rest, it'll say "for full text." But I don't know
3 if that's a question for -- if that's a statement for you
4 guys or what, how -- is that -- is that an issue or is that
5 just because we were trying to push this as quick as we can
6 and that was kind of overlooked? But what really is the
7 appropriate language that should be here? Should it say "a
8 full text of" or -- I'm trying to go back as many as I could
9 scan while Jonathan was talking. So but I -- I just feel
10 that we -- it's not rush -- but if we just -- we don't get
11 it. And I don't think it's fair to the public that they
12 only -- if you got it on a Friday afternoon and the
13 meeting's on Monday, I don't -- I don't feel that that's --

14 MR. SHINKLE: They got it Thursday. They knew
15 exactly what we were going to do last Thursday.

16 MS. BRADSHAW: No; no. It's not -- but Norm, they
17 knew it but they didn't have it in front of them. If there
18 was something else --

19 MR. SHINKLE: But they knew it was coming.

20 MS. BRADSHAW: Well, I understand that. But we
21 need to be able to give not only the lawyers in the room,
22 I'm sorry, but every day people who may not understand this
23 process fully and I just feel that that's who we are. We
24 protect the process and I feel that we need to give the
25 process the correct time and procedure regardless of it. I

1 don't, you know, regardless of what this is, but this
2 (indicating) has to be -- it has to have the 100-word
3 summary if that's what they want and it has to be approved
4 by us and it means we might have another meeting, but I --
5 I've thought about this all since our last meeting and even
6 before that. Because we don't have rules set out, because
7 we just have procedures or policy, that we're just doing a
8 disservice to any organization that sits in front of us and
9 they're just trying to --

10 MR. SHINKLE: Wow, Jeannette.

11 MS. BRADSHAW: -- when you want to push it
12 through. That's just how I feel, Norm.

13 MR. SHINKLE: Yeah.

14 MS. BRADSHAW: But thank you for letting me speak.

15 MR. SHINKLE: Okay. Very good. What's the
16 Board's pleasure?

17 MR. DAUNT: Adam, did you -- were you going to say
18 something --

19 MS. BRADSHAW: Yes. Can you give us a -- anything
20 on that?

21 MR. SHINKLE: Oh, yeah, on the comment?

22 MR. FRACASSI: So the language that's being talked
23 about, that the -- underneath that eight point font it says
24 "petition to initiate legislation," the -- so for the full
25 text of the proposal, that phrase is not mandated by

1 statute.

2 MS. BRADSHAW: Okay.

3 MR. FRACASSI: And how it ends, how that sentence
4 ends, it does say "see the reverse side of this petition for
5 the full," meaning for the full text. That where this
6 petition differs from some of the other ones that we've
7 seen, this one touches nine, it amends nine sections and
8 adds three or four whereas the last three that this Board
9 has approved has only amended one or two. So the
10 constitution requires that the text of the -- like the
11 section number be specifically printed with the -- and then
12 the most recent "as amended by," for example, "2018 PA 603"
13 per each section. So that's why this one's a little bit
14 longer. That's why this one does seem a little bit more
15 like the may "summary," than for example you mentioned Fair
16 and Equal, Unlock Two, petitions like that.

17 MS. BRADSHAW: I appreciate that explanation, but
18 it just -- when it starts the same as the other paragraph,
19 that does make it a little bit more confusing.

20 MR. CHRIS TREBILCOCK: That's quite frankly what
21 confused me when I was looking at it as I'm running out the
22 door.

23 MR. DAUNT: Okay. Well, thank for the
24 explanation.

25 MR. FRACASSI: Yup.

1 MR. DAUNT: I move that the Board approve the form
2 of the initiative petition submitted by Secure MI Vote with
3 the understanding that the Board's approval does not extend
4 to the substance of the proposal which appears on the
5 petition or the manner in which the proposal language is
6 affixed to the petition.

7 MR. SHINKLE: Is there support? I'll support it.
8 Discussion? Further discussion? Any discussion on the
9 motion? Seeing none, I'll call for a voice vote. All those
10 in favor of the motion signify by saying "aye."

11 ALL: Aye.

12 MS. BRADSHAW: I will vote for this, but
13 understand that we do have voter ID laws in the state of
14 Michigan and I don't feel that we should be hamstringing
15 clerks to --

16 MR. SHINKLE: Okay. Let me -- let me finish the
17 vote.

18 MS. BRADSHAW: I know you're going to cut me off.

19 MR. SHINKLE: All those opposed say "no." Boom.
20 It passes. Go ahead.

21 (Whereupon motion passed at 9:52 a.m.)

22 MS. BRADSHAW: I am not opposed.

23 MR. SHINKLE: You are --

24 MS. BRADSHAW: I am not opposed. I am --

25 MR. SHINKLE: Right. Your global -- your "yes"

1 vote explanation?

2 MS. BRADSHAW: -- my yes vote explanation, thank
3 you very much, Chairman, is we should be encouraging people
4 to vote and I just feel that this petition kind of
5 hamstrings clerks on doing their job and promoting voting.
6 So that's how I feel about it, but my role is to approve the
7 form.

8 MR. SHINKLE: Okay. That is done. We're moving
9 on to number three on the agenda which is any and other
10 business in front of the Board. Is there any other business
11 to come to the Board?

12 MS. BRADSHAW: Erik, is there any updates since
13 Thursday?

14 MR. GRILL: There are no litigation updates since
15 Thursday.

16 MS. BRADSHAW: I just wanted to make sure.

17 MR. SHINKLE: That's not one business day. Okay.
18 Seeing none, Jonathan, you got something? Your hand is
19 partially up.

20 MR. BRATER: Well, on the point of -- on the point
21 of process that Board Member Bradshaw raised regarding
22 approval as to form or conditional approval as to form. I
23 think it would be helpful for us to have some guidance going
24 forward on how the Board wants to handle this because
25 since -- you know, since the 100-word statute has been --

1 has been in place, it hasn't been very long, it's only since
2 2018 I believe, there have been a handful of these petitions
3 and the way the Board has handled them is they have
4 approved -- when they've approved the 100-word summary, they
5 have also approved the form of the petition with the
6 understanding that the 100 words would be updated to reflect
7 what the Board changed, if the Board changed anything. This
8 one was different because there were additional issues, it
9 wasn't just the 100-word summary. There is not a specific
10 statutory obligation for the Board to approve as to form.
11 There's not a statutory restriction on how the Board does
12 that. It's something the Board does because it allows
13 issues that are raised as to form to be addressed by the
14 Board and addressed by the petition circulators before we
15 get to the point where we've received thousands of sheets
16 and these issues are first coming to light. So, you know, I
17 would defer to the AG's Office in terms of what the Board
18 can or cannot do, but we have been proceeding with the
19 understanding that because there is not a statutory
20 requirement as to how the Board approves form, it can do it
21 in the way it's been doing it.

22 The only thing I'll note is we certainly can have
23 a separate meeting each time to approve as to form, but that
24 will of course mean that the Board is meeting twice for
25 every petition and we won't necessarily always be able to do

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them in rapid succession. So there could be some slowdown of future petitions if we proceed in that way, assuming that the petitioners want to wait for approval as to form which they don't have to but which we certainly would advise them to do because it allows them to address any issues that the Board identifies before they submit all their petitions.

MR. SHINKLE: Okay. Anybody else? We are adjourned.

(Proceedings concluded at 9:55 a.m.)

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| <p style="text-align: center;">A</p> <p>a.m 1:6 3:2 5:3 19:21 22:9</p> <p>able 10:24 16:21 21:25</p> <p>absolutely 8:19</p> <p>accept 14:25</p> <p>accusing 7:23</p> <p>Act 3:14</p> <p>action 3:22 4:3,8</p> <p>actual 15:2,4</p> <p>Adam 1:10 17:17</p> <p>additional 21:8</p> <p>address 9:25 13:12 22:5</p> <p>addressed 21:13,14</p> <p>adds 18:8</p> <p>adequate 6:20 7:1</p> <p>adjourned 22:8</p> <p>advise 22:4</p> <p>affidavit 3:6,25 4:1 4:12,15,17,20,21 5:22 6:2,23 11:16 14:22</p> <p>affixed 19:6</p> <p>afternoon 11:3 16:12</p> <p>AG's 21:17</p> <p>agenda 3:16,22 4:3 4:8 20:9</p> <p>agreed 11:14</p> <p>ahead 19:20</p> <p>allow 14:21</p> <p>allows 21:12 22:5</p> <p>amend 3:19,21 8:23</p> <p>amended 18:9,12</p> <p>amends 18:7</p> <p>ANTHONY 1:9</p> <p>anybody 6:4 12:20 22:7</p> <p>anymore 15:21</p> <p>apparent 14:15</p> <p>apparently 9:23 10:2</p> <p>APPEARANCES 1:12</p> <p>appears 10:14 19:4</p> <p>appreciate 18:17</p> <p>appropriate 5:21 16:7</p> <p>approval 2:3 19:3 20:22,22 22:3</p> | <p>approve 3:8 5:11 11:25 15:4,21,25 19:1 20:6 21:10 21:23</p> <p>approved 4:5 7:16 17:3 18:9 21:4,4,5</p> <p>approves 21:20</p> <p>approving 6:18 11:21 14:25 15:1</p> <p>Assistant 1:13</p> <p>assuming 12:12 22:2</p> <p>attorney 13:17</p> <p>Attorneys 1:13</p> <p>available 12:9,9</p> <p>Avers 2:7 13:2,5,5,8 13:9,18,21,22</p> <p>awhile 13:21</p> <p>aye 4:25 5:1 19:10 19:11</p> <hr/> <p style="text-align: center;">B</p> <p>back 11:14,22 12:16 16:8</p> <p>ballot 7:2 10:10 11:6</p> <p>behalf 6:16 13:6</p> <p>believe 5:7 21:2</p> <p>BENSON 1:3</p> <p>Benson's 13:11</p> <p>bit 18:13,14,19</p> <p>blue 6:3,4,5 12:25 13:1</p> <p>Board 1:4,8,9,9 2:9 3:4,22,23 4:3,5,8 7:15,20 8:9 10:20 13:10 14:24 15:9 15:9,17 18:8 19:1 20:10,11,21,24 21:3,7,7,10,11,12 21:14,17,20,24 22:6</p> <p>Board's 3:17 17:16 19:3</p> <p>Boom 19:19</p> <p>Boy 13:2</p> <p>Bradshaw 1:9 3:8 3:18,22 4:3,7,9,16 5:9 6:5 13:4,23,25 14:3 16:16,20 17:11,14,19 18:2 18:17 19:12,18,22 19:24 20:2,12,16</p> | <p>20:21</p> <p>BRATER 1:10 3:10 3:13 4:14 5:6,10 5:16,19,24 8:9,17 20:20</p> <p>bring 6:6 11:22</p> <p>bringing 12:25</p> <p>Bureau 7:22</p> <p>business 2:8 6:25 20:10,10,17</p> <hr/> <p style="text-align: center;">C</p> <p>call 10:24 19:9</p> <p>called 12:17</p> <p>Canvassers 1:4 3:4</p> <p>Canvassers' 7:20</p> <p>card 6:4,5 12:25</p> <p>cards 6:3 13:1</p> <p>case 6:19 7:3</p> <p>casual 10:18</p> <p>CER 1:17</p> <p>certain 10:8</p> <p>certainly 21:22 22:4</p> <p>Certified 1:18</p> <p>Chair 1:8 3:18</p> <p>Chairman 20:3</p> <p>changed 21:7,7</p> <p>changes 15:10</p> <p>choosing 10:14</p> <p>Chris 2:6 6:8,10,12 6:14,15,16 7:19 7:25 8:7,13,19,25 9:5,10,13,16,19 11:24 12:3,17,19 12:22 13:20 18:20</p> <p>circulators 21:14</p> <p>citizens 15:12</p> <p>clear 12:4</p> <p>clerks 19:15 20:5</p> <p>click 8:13,14</p> <p>closely 11:9</p> <p>closer 10:24</p> <p>codes 9:8,8</p> <p>collect 10:8</p> <p>come 8:16 12:16,24 14:18 15:16 20:11</p> <p>comes 15:14</p> <p>coming 12:18 16:19 21:16</p> <p>comment 17:21</p> <p>committee 9:21 10:10</p> <p>committees 7:2</p> | <p>completely 11:18</p> <p>comply 10:10</p> <p>concerns 9:25</p> <p>concluded 22:9</p> <p>condition 11:21,21</p> <p>conditional 15:20 20:22</p> <p>conditionally 11:25 12:12</p> <p>conditionals 15:21</p> <p>conditions 14:25</p> <p>confused 18:21</p> <p>confusing 18:19</p> <p>congressional 10:5 10:7,8</p> <p>Consideration 2:3,5</p> <p>constitution 18:10</p> <p>containing 4:12</p> <p>content 14:16</p> <p>CONTENTS 2:1</p> <p>contested 6:19</p> <p>conversation 15:8</p> <p>Corporation 1:18</p> <p>correct 5:23,24 6:1 6:2 9:5,22,25 13:18 15:25 16:25</p> <p>corrected 4:24 5:25 9:19 12:13</p> <p>correcting 14:23</p> <p>count 12:14</p> <p>couple 14:4</p> <p>course 21:24</p> <p>curious 14:14</p> <p>current 10:6</p> <p>cut 19:18</p> <hr/> <p style="text-align: center;">D</p> <p>DAUNT 1:9 4:11 5:17 7:18 8:3 11:10 17:17 18:23 19:1</p> <p>day 12:10 16:22 20:17</p> <p>day's 6:25</p> <p>deadline 7:3</p> <p>debate 6:22</p> <p>defense 9:18</p> <p>defer 21:17</p> <p>delay 11:9</p> <p>delete 7:11</p> <p>deletes 7:11</p> <p>DEPARTMENT 1:2</p> | <p>detail 7:8</p> <p>determined 3:23</p> <p>different 7:12 9:14 11:1 21:8</p> <p>differs 18:6</p> <p>discussed 8:4 11:20</p> <p>discussion 4:23 19:8 19:8,8</p> <p>disservice 17:8</p> <p>district 10:6,7</p> <p>districts 10:9</p> <p>documents 13:13</p> <p>doing 11:20 12:2 17:7 20:5 21:21</p> <p>door 18:22</p> <p>drew 14:14</p> <p>due 3:24 4:12,17 6:19</p> <p>DUNN 5:12</p> <p>duplicate 14:9</p> <p>duty 15:17</p> <hr/> <p style="text-align: center;">E</p> <p>eight 17:23</p> <p>election 8:23 10:21</p> <p>Elections 1:10,10 7:22</p> <p>Electronic 1:18</p> <p>electronically 8:6</p> <p>encourage 11:8</p> <p>encouraging 20:3</p> <p>ends 11:8 18:3,4</p> <p>Enjoyed 11:12</p> <p>equal 14:11 15:13 18:16</p> <p>Erik 1:13 20:12</p> <p>error 4:1 8:2 9:22 10:4</p> <p>errors 4:12,14,18,20 4:21 5:25 7:7 11:17</p> <p>everybody 10:12 11:18 12:25</p> <p>exactly 8:11 12:1,6 16:15</p> <p>example 10:23 18:12,15</p> <p>exceeds 7:9</p> <p>explanation 18:17 18:24 20:1,2</p> <p>extend 19:3</p> <p>extent 13:15</p> <p>extra 15:5,6</p> |
|--|--|--|--|---|

| | | | | |
|--|---|--|---|--|
| <p>eye 14:14</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fair 14:11 15:13 16:11 18:15 fairness 7:2 fashion 11:12 favor 4:24 19:10 feel 14:25 15:6,23 16:9,13,23,24 17:12 19:14 20:4 20:6 filed 7:6 Finally 10:16 find 7:1 9:20,24 10:1 12:11,16 finish 19:16 Firm 1:19 first 3:15 11:3 13:20 14:22 21:16 five 11:4 fixed 11:21 folks 11:16 following 10:13 font 9:3,4,7 17:23 form 2:5 3:24 4:11 4:17 6:18 7:7 8:3 10:1,6 12:7 15:1,1 15:1,2,4,18,25 19:1 20:7,22,22 21:5,10,13,20,23 22:3 formatting 11:17 forward 10:3 20:24 four 18:8 FRACASSI 1:10 5:15 8:18,20 9:3,6 9:12,14 17:22 18:3,25 frankly 7:5 18:20 Friday 6:24 11:3 16:12 friendly 3:21 front 3:17 8:6,12 10:18 15:17 16:17 17:8 20:10 full 14:6,13 16:2,8 17:24 18:5,5 fully 16:23 fundamental 6:19 further 2:8 4:23 19:8 future 22:2</p> | <p style="text-align: center;">G</p> <hr/> <p>General 1:13 give 11:8 16:21,24 17:19 given 6:21 7:4 glaring 7:9 global 19:25 go 4:19 16:8 19:20 goes 15:19 going 6:12 7:8 11:25 12:1,6,20 16:15 17:17 19:18 20:23 good 6:15,16 9:18 11:7 13:5 17:15 GOP 10:3,12,15 great 13:1 GRILL 1:13 20:14 guidance 20:23 guys 7:12,23 8:8 12:6 16:4</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hamstringing 19:14 hamstrings 20:5 hand 20:18 handed 6:8 handful 21:2 handle 11:14,20 20:24 handled 21:3 hard 11:11 12:5 hear 5:15 hearings 6:20 helped 7:5 helpful 20:23 helping 13:12 Hey 10:25 Highway 1:5 hold 9:21 hope 10:21</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>ID 9:23 12:17,17 19:13 idea 11:19 identified 6:1 identifies 22:6 important 10:16,21 11:15,22 14:23 included 3:25,25 4:9 4:9,13,21 15:3 incorrect 4:10,17,19</p> | <p>incredibly 11:11 12:5 indicating 17:2 initiate 8:23 14:7 15:12 17:24 initiated 14:12 initiation 8:21 14:5 14:7,18 initiative 2:5 3:23 19:2 inside 9:6 ironic 9:20 10:2 12:11,16 issue 14:22 16:4 issues 21:8,13,16 22:5 it'll 3:21 14:5 16:2 item 4:4,8 5:7 items 3:22</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>Jeannette 1:9 5:13 17:10 job 20:5 JOCELYN 1:3 Jonathan 1:10 3:7 5:5,21 16:9 20:18 July 7:4</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 5:20 10:19 kids 15:22 kind 13:20 15:22 16:6 20:4 Klingshirn 1:17 knew 13:19 16:14 16:17,19 know 8:10 10:17,17 10:23 11:17 13:13 13:14 15:5,21,24 16:2 17:1 19:18 20:25 21:16 knows 15:15</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lacks 6:18 7:1 language 3:5 4:15 7:15 16:7 17:22 19:5 Lansing 1:5,14 3:1 late 6:23 law 6:19 8:23 10:6 laws 19:13</p> | <p>lawyers 16:21 legislation 8:22,23 14:8,13,17,18 15:13 17:24 legislations 14:5 Let's 3:11 letting 17:14 licensed 13:17 light 21:16 link 8:14,15 listed 10:6 litigation 10:9 20:14 little 10:24 18:13,14 18:19 long 15:9 21:1 longer 18:14 look 7:14 11:1 12:4 14:19,21 looked 10:23 looking 11:4 14:4,10 16:1 18:21 looks 9:17 10:25 lot 13:24</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>making 7:24 mandated 17:25 mandatory 9:7 manner 19:5 Marcy 1:17 mean 14:19 21:24 meaning 18:5 meaningful 6:22 means 15:3 17:4 meet 13:10 meeting 1:4 2:3 3:3 3:9,13,16,19 5:11 5:21 8:4 11:3 14:16 15:4,5 17:4 17:5 21:23,24 meeting's 16:13 meetings 3:14 14:16 Member 1:9,9 20:21 mentioned 18:15 MI 2:5 3:24 4:16 6:17 7:17 8:1,14 11:15 13:6 19:2 Michigan 1:1,5,14 3:1 8:23 13:17 14:11,11 19:14 Michigan's 15:12 microphone 6:11 mid-afternoon 6:24</p> | <p>minutes 2:3 3:9,16 3:19 4:23 5:11,21 11:4 mistake 7:24 8:1 mistakes 11:15 Monday 1:6 3:2 6:24 16:13 morning 6:15,25 9:1 11:4 13:5 motion 3:19 4:25 5:3,8,10 19:9,10 19:21 move 19:1 Moved 5:13 moving 20:8</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 3:6 13:2 necessarily 21:25 need 5:10 15:1,6,11 15:13 16:21,24 needed 5:9 needs 15:24 Network 1:18 new 5:24 nine 18:7,7 Nope 4:7 Norm 16:16 17:12 normally 14:4 NORMAN 1:8 note 21:22 noted 11:11 notice 6:20,25 7:13 12:10 13:11 15:10 noticed 3:11,14,15 14:22 Noticing 14:21 number 1:19 15:16 18:11 20:9</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 12:8,10 objecting 12:4 objection 6:22 12:7 objectionable 7:1 obligation 21:10 obvious 12:2 Obviously 13:11 occasion 11:13 occur 6:22 Office 7:22 21:17 oh 3:13 5:16,20 6:4 6:8 12:25 15:22</p> |
|--|---|--|---|--|

| | | | | |
|--|--|---|---|---|
| <p>17:21 okay 3:15 5:12,20 7:23 9:13,16 12:12 13:7,21,24 17:15 18:2,23 19:16 20:8,17 22:7 old 6:11 7:11 one's 18:13 one-business 12:10 ones 18:6 online 7:7,8,14,14 7:15,18 8:11 Open 3:14 opportunity 6:21 10:24 12:8 opposed 5:2 19:19 19:22,24 opposing 7:2 organization 17:8 organizations 14:18 original 7:10,16 Ottawa 1:14 outfit 3:6 overlooked 16:6</p> <hr/> <p style="text-align: center;">P</p> <p>P64713 1:13 PA 18:12 page 2:2 4:7 paragraph 18:18 part 4:22 9:14 partially 20:19 parties 12:8 party 15:13 passed 5:3 19:21 passes 5:2 19:20 people 14:17 16:22 20:3 percentages 10:8 person 6:7 9:22,24 9:25 12:14 personal 10:19 13:1 personally 13:1 petition 2:5 3:5,23 4:15 5:25 6:23 7:6 7:7 8:14,22 9:6,8 11:17 12:7 14:7 14:12 15:16,24,24 17:24 18:4,6 19:2 19:5,6 20:4 21:5 21:14,25 petitioners 22:3</p> | <p>petitions 15:16 18:16 21:2 22:2,6 phrase 17:25 place 4:20 21:1 play 14:23 pleasure 3:17 17:16 point 9:20 14:4 17:23 20:20,20 21:15 policy 17:7 political 11:7 posted 6:23 7:8,13 8:11 11:2 presented 2:9 preserve 10:5 Pretty 6:10 previous 3:9 5:7 printed 18:11 printer 3:6 14:22 printer's 3:24 4:1 4:12,15,17,19,21 5:22 6:2,23 11:16 problems 3:5 procedure 15:8 16:25 procedures 17:7 proceed 22:2 proceeding 21:18 Proceedings 22:9 process 6:18,19 10:21 11:2,6 12:11 15:7 16:23 16:24,25 20:21 product 15:18 promoting 20:5 promptly 13:13 promulgated 15:7 properly 2:9 3:11 3:13,15 proponents 7:6 proposal 10:3,11 11:6 12:13 17:25 19:4,5 proposed 14:6 protect 6:17 15:6 16:24 protecting 15:12 prove 12:16 provide 9:7 provided 7:13 public 6:21 7:2,13 8:7 11:8 12:9 14:21 16:11</p> | <p>pull 7:14,20 8:15 pulled 9:1 14:10,10 14:11 push 16:5 17:11 pushed 10:11 11:6 pushing 10:3</p> <hr/> <p style="text-align: center;">Q</p> <p>question 8:18 13:21 14:1,9 16:1,3 questions 13:22 quick 16:5 quickly 11:7 quietly 15:10 quite 7:5 10:1 18:20</p> <hr/> <p style="text-align: center;">R</p> <p>raise 10:4 raised 20:21 21:13 rapid 22:1 re-vote 5:18 read 13:2 reading 4:2 real 7:3 really 14:20 15:11 16:6 reason 11:7 received 6:2 21:15 record 6:12 13:3,16 RECORDED 1:17 Recorder 1:18 referring 8:20,21 reflect 21:6 regarding 20:21 regardless 14:16 16:25 17:1 registered 12:15 15:19 Registration 1:19 reject 11:19 remove 4:13 repeat 7:10 10:25 repeats 9:10 replaced 4:22 Reporting 1:18 represents 12:24 required 10:7 requirement 10:11 21:20 requires 18:10 rest 16:2 restriction 21:11 resubmitted 10:1</p> | <p>reverse 18:4 review 6:21 11:9 reviewed 6:1 revised 6:22 right 4:2,13 6:11 7:14,20 11:23 12:19 15:12 19:25 road 11:5 Robert 2:7 13:5,5,8 13:9,18 role 10:21 14:24 15:17 20:6 room 16:21 rules 10:2,12,15,15 15:7 17:6 running 18:21 rush 7:3 11:13 16:10 rushed 11:2,19 14:19 rushing 10:22</p> <hr/> <p style="text-align: center;">S</p> <p>Saginaw 1:5 saying 4:25 14:7,12 19:10 says 8:21,22 12:13 14:13 17:23 scan 16:9 scheduled 3:3,4 second 4:7 5:7,9,10 9:20 seconded 5:13 Secretary 1:3 7:21 13:11 section 9:8 18:11,13 sections 18:7 Secure 2:5 3:24 4:16 7:17 8:1,14 11:15 12:24 13:6 19:2 see 6:16 8:7 9:23 18:4 Seeing 4:24 19:9 20:18 seen 8:8,9 18:7 sense 14:9 sentence 4:22 16:1 18:3 separate 15:4 21:23 September 1:6 2:4 3:2 service 13:1 set 17:6</p> | <p>sheets 21:15 SHINKLE 1:8 3:3 3:11,15,20 4:2,5,8 4:19 5:2,4,13,18 5:20 6:3,6,10 7:23 8:5 9:18 11:24 12:17,20,23 13:7 13:16,19,24 14:2 16:14,19 17:10,13 17:15,21 19:7,16 19:19,23,25 20:8 20:17 22:7 short 13:10 show 9:22,23,24,24 side 18:4 sign 15:19 signify 4:25 19:10 simply 11:13 sit 15:10 site 7:19,20,20 sits 17:8 size 9:3,4 slowdown 22:1 slowed 11:25 somebody 12:23 something's 12:12 sorry 5:6,6,16 16:22 sparring 11:12 speak 11:18 17:14 special 6:10 specific 21:9 specifically 18:11 Spies 9:23 staff 1:10,10 9:18 10:25 11:11 12:4 13:11 14:3 stamped 7:21 stand 6:11 9:19 start 3:12 starts 18:18 state 1:1,2,3,4,13 13:17 14:12,15,24 19:13 State's 7:22 statement 16:3 statute 18:1 20:25 statutory 21:10,11 21:19 step 15:6 Street 1:14 stress 15:20 stuff 11:12 subject 10:9</p> |
|--|--|---|---|---|

| | | | |
|---|--|--|--|
| <p>submit 22:6 submitted 2:5 3:24 7:10,17 19:2 substance 19:4 succession 22:1 summaries 8:15 9:1 9:2,17 summary 4:6 6:23 7:9,10,15,16 8:11 8:25 9:11,12 11:1 15:3 17:3 18:15 21:4,9 support 19:7,7 supposed 12:15 13:19 sure 8:17 9:17 11:23 14:2 15:11,15,18 20:16</p> <hr/> <p style="text-align: center;">T</p> <p>TABLE 2:1 take 3:7 5:5 6:10 14:19 15:6,11 takes 4:20 talk 6:12 10:17 talked 17:22 talking 8:10,24 16:9 tell 3:20 telling 15:22 terms 11:16 21:17 testify 12:20 text 14:6,13 16:2,8 17:25 18:5,10 thank 12:22 13:9,21 13:25 14:23 17:14 18:23 20:2 thanks 12:18 13:11 13:24 thee 10:2,15 thing 3:16 8:11 11:4 12:11 21:22 things 6:21 10:19,19 10:22 11:20 think 7:1,5,25 8:1 10:6,16,20,22 11:5,10,18 16:11 20:23 thought 11:22 17:5 thousands 21:15 three 14:10 18:8,8 20:9 Thursday 3:4 11:24 12:2 16:14,15</p> | <p>20:13,15 time 7:4 9:24 11:9 13:20 14:20,22 15:11 16:25 21:23 timely 11:12 titled 9:8 today 5:4 12:21 14:24 Tony 5:14 top 8:14 15:5 touches 18:7 Trebilcock 2:6 6:8 6:12,14,15,16 7:19,25 8:7,10,13 8:19,25 9:5,10,13 9:16,19 12:3,19 12:22 18:20 Trebilcock's 14:3 try 10:19 trying 16:5,8 17:9 turn 12:5 turning 13:12 twice 9:10 21:24 two 8:15,15 9:1,1,17 18:9,16 typo 11:16 typographical 4:12 4:18,20,21 typos 3:5 5:22 13:12</p> <hr/> <p style="text-align: center;">U</p> <p>underneath 8:22 17:23 understand 12:4 14:8 16:20,22 19:13 understanding 19:3 21:6,19 Unlock 14:11 18:16 updated 21:6 updates 20:12,14</p> <hr/> <p style="text-align: center;">V</p> <p>version 7:11 9:1 voice 19:9 voluntarily 10:10 10:13 vote 2:5 4:16 6:17 7:17 8:1,14 11:9 11:15 12:14,24 13:6 19:2,9,12,17 20:1,2,4 voter 15:19,19</p> | <p>19:13 voters 9:21 voting 12:15 20:5</p> <hr/> <p style="text-align: center;">W</p> <p>wait 22:3 want 3:20 5:18 14:24 15:2,7 17:3 17:11 22:3 wanted 13:9,14 20:16 wants 9:21 20:24 wasn't 21:9 watched 15:10 way 21:3,21 22:2 we're 5:4 10:17,17 10:22 11:14,19,24 12:1 17:7 20:8 we've 4:23 10:18 11:3 14:5 18:6 21:15 web 7:19,20,20 week 7:16 welcome 12:24 West 1:5,14 willingness 13:10 wording 15:5 words 7:9 8:6 21:6 worked 11:11 working 6:5 works 12:5 Wow 13:4 17:10 wrong 3:6 9:16</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p style="text-align: center;">Y</p> <p>yeah 3:20 5:9 8:19 8:19,25 12:17 17:13,21 Yup 3:22 9:19 18:25</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p style="text-align: center;">0</p> <p>0-0-0- 22:11</p> <hr/> <p style="text-align: center;">1</p> <p>1 2:3,6 1-800-632-2720 1:19 100 7:9 8:6 15:2 21:6</p> | <p>100-word 4:5 15:3 17:2 20:25 21:4,9 12 9:3 13 2:7</p> <hr/> <p style="text-align: center;">2</p> <p>2 2:5,7 20 2:9 2018 18:12 21:2 2021 1:6 2:4 3:2 23 2:4 27 1:6 3:2</p> <hr/> <p style="text-align: center;">3</p> <p>3 2:4,5,8 373-1110 1:15</p> <hr/> <p style="text-align: center;">4</p> <p>48909 1:14</p> <hr/> <p style="text-align: center;">5</p> <p>5 2:5 517 1:15 525 1:14</p> <hr/> <p style="text-align: center;">6</p> <p>6 2:6 603 18:12 6924 1:17</p> <hr/> <p style="text-align: center;">7</p> <p>7710 1:5</p> <hr/> <p style="text-align: center;">8</p> <p>8 9:4,6,6 8151 1:19</p> <hr/> <p style="text-align: center;">9</p> <p>9:30 1:6 9:32 3:2 9:34 5:3 9:52 19:21 9:55 22:9</p> |
|---|--|--|--|