

STATE OF MICHIGAN
IN THE SUPREME COURT

REPRODUCTIVE FREEDOM
FOR ALL, a Michigan ballot
question committee, PETER
BEVIER, an individual, and JIM
LEDERER, an individual,

Plaintiffs,
v

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

Defendants,

and

CITIZENS TO SUPPORT MI
WOMEN AND CHILDREN,

Proposed Intervenor-Defendant.

Supreme Court Case No. 164760

**THIS MATTER INVOLVES A
CLAIM THAT A PROPOSED
STATE GOVERNMENTAL ACTION
IS INVALID**

**Election matter – Plaintiffs have
requested action by September 7,
2022**

**PROPOSED INTERVENOR-DEFENDANT CITIZENS TO SUPPORT MI
WOMAN AND CHILDREN’S ANSWER TO COMPLAINT FOR IMMEDIATE
MANDAMUS RELIEF AND *EX PARTE* MOTION FOR
ORDER TO SHOW CAUSE**

Citizens to Support MI Women and Children, Proposed Intervenor-
Defendant, pursuant to MCR 7.306(D)(2) files this Answer to the Complaint For
Immediate Mandamus Relief and *Ex Parte* Motion for Order to Show Cause (the
“Complaint”), and in like-numbered paragraphs states:

INTRODUCTION

This case is straightforward—though not in the way Plaintiffs suggest. Plaintiff Reproductive Freedom For All (RFFA) in March 2022 obtained conditional approval from the Board of State Canvassers for its petition to amend the Michigan Constitution, subject to removing one, extraneous word: “the.” But when RFFA printed its Petition, it deviated from the Board-approved text, removing word spacing that replaced dozens of words with at least 12 nonsensical *non*-words, devoid of any meaning. Though the Petition’s flawed form would have been obvious to anyone who tried to read it, RFFA made the tactical decision to go ahead and circulate the Petition with the substantial errors anyway. Voters, apparently including Plaintiffs Bevier and Lederer, signed it, either without reading the Petition or without caring they were supporting the addition of nonsense to Michigan’s Constitution. Based on the fatal errors in the Petition’s form, the Board of State Canvassers rightly declined to certify it for the ballot.

As Citizens to Support MI Women and Children details in its September 6, 2022 brief, mandamus is inappropriate here. The Board properly carried out its constitutional and statutory duty in declining to certify a Petition that did not set forth the “full text” of the proposed amendment, since both Const 1963, art 12, § 2 and MCL 168.482(3) plainly require that. Indeed, the Board has consistently rejected similar errors in past petitions, and one of those decisions was upheld by the Michigan Court of Appeals. Accordingly, the Board had no “clear duty” to certify the nonsensical and error-filled Petition that RFFA presented here.

There is a proper way to amend Michigan's Constitution, and the Board of Canvassers properly carried out its duties because RFFA has not followed it. Mandamus is inappropriate and should be summarily denied.¹

PARTIES, JURISDICTION AND VENUE

1. Answering Paragraph 1 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
2. Answering Paragraph 2 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children neither admits nor denies the allegations contained therein, being without sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof.
3. Answering Paragraph 3 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children neither admits nor denies the allegations contained therein, being without sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof.
4. Answering Paragraph 4 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.

¹ Though Citizens to Support MI Women and Children submitted to this Court the transcript of the August 31, 2022 Board of Canvassers hearing, Tab 3 to its 9/5/22 Brief, the video (with accompanying audio) of the Board's consideration of RFFA's Petition now has been posted to YouTube, here: <https://youtu.be/htL4A2DyfO8>

5. Answering Paragraph 5 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits that the Defendant Board of State Canvassers is a public body tasked with certain obligations, including among other obligations, determining whether the form of a petition is in actual compliance under Michigan law and whether it has been signed by a sufficient number of qualified and registered electors. To the extent that any further allegations are made therein, they contain legal conclusions to which no response is required.
6. Answering Paragraph 6 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits Defendant Secretary's legal duties include in part those set forth therein.
7. Answering Paragraph 7 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
8. Answering Paragraph 8 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law

interpreting them, are hereby denied as untrue in the manner and form alleged.

9. Answering Paragraph 9 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required.

By way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

10. Answering Paragraph 10 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required.

By way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

11. Answering Paragraph 11 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children states that this

paragraph contains legal conclusions for which no response is required.

By way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

12. Answering Paragraph 12 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children neither admits nor denies the allegations contained therein, being without sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof.
13. Answering Paragraph 13 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children indicates that the Minutes of these proceedings are the best evidence of their content, and neither admits nor denies the allegations contained therein, but leaves Plaintiffs to their proofs.
14. Answering Paragraph 14 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children indicates that the Minutes of these proceedings are the best evidence of their content, and neither admits nor denies the allegations contained therein, but leaves Plaintiffs to their proofs.

15. Answering Paragraph 15 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children indicates that the Minutes of these proceedings are the best evidence of their content, and neither admits nor denies the allegations contained therein, but leaves Plaintiffs to their proofs.
16. Answering Paragraph 16 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits that Plaintiff RFFA filed a petition with the Secretary of State on March 30, 2022 that failed to comply with the form requirements under Michigan law. To the extent that any further allegations are made therein, by way of further response, the Proposed Intervenor-Defendant hereby denies such additional allegations as untrue.
17. Answering Paragraph 17 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children neither admits nor denies the allegations contained therein, being without sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof.
18. Answering Paragraph 17 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children neither admits nor denies the allegations contained therein, being without sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof.

19. Answering Paragraph 19 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
20. Answering Paragraph 20 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
21. Answering Paragraph 21 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
22. Answering Paragraph 22 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits only that it submitted a Challenge to the form of the petition filed by Plaintiff RFFA for its failure to comply with Michigan law. Proposed Intervenor-Defendant Citizens to Support MI Women and Children indicates that the Challenge filed against RFFA's defective petition is the best evidence of its content, and neither admits nor denies the allegations contained therein, but leaves Plaintiffs to their proofs. To the extent that any further allegations are made therein, by way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children hereby denies such additional allegations as untrue.
23. Answering Paragraph 23 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits only that

the Plaintiff RFFA filed a response to the Challenge to the form of the petition filed by Plaintiff RFFA for its failure to comply with Michigan law, and that while Plaintiff RFFA was sent Intervenor-Defendant's Challenge immediately upon its filing, Intervenor-Defendant was not sent Plaintiff RFFA's Response until seeing it referenced in the August 25 Staff Report and asking for a copy. To the extent that any further allegations are made therein, by way of further response, Proposed Intervenor-Defendant Citizens to Support MI Women and Children hereby denies such additional allegations as untrue.

24. Answering Paragraph 24 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
25. Answering Paragraph 25 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies that the allegations contained therein accurately reflect the nature of Proposed Intervenor-Defendant Citizens to Support MI Women and Children's Challenge to the Form of Petition, which as the name suggests was a challenge to the *form* of the petition, not its substance. Answering further, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the balance of the Paragraph accurately sets forth the quoted portion of the Staff Report.

26. Answering Paragraph 26 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein. At no time has either the Defendant Board of State Canvassers or the Bureau of Elections Staff ever found that the form of the petition actually submitted by Plaintiff RFFA complies with the form requirements under Michigan law.
27. Answering Paragraph 27 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
28. Answering Paragraph 28 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
29. Answering Paragraph 29 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies it as untrue to the extent it implicitly restates the assertion from Paragraph 26 that Staff found the Petition's form complies with election law, since at no time has either the Defendant Board of State Canvassers or the Bureau of Elections Staff ever found that the form of the petition actually submitted by Plaintiff RFFA complies with the form requirements under Michigan law. Answering further, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the Paragraph accurately sets forth the quoted portion of the Amended Staff Report.

30. Answering Paragraph 30 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
31. Answering Paragraph 31 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
32. Answering Paragraph 32 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
33. Answering Paragraph 33 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits Director Brater said the quoted words but denies that he was correct or that his words accurately reflect the applicable law. Answering further, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies any remaining allegations contained therein.
34. Answering Paragraph 34 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits only that conditional ballot wording was adopted at the August 31, 2022 meeting. To the extent that any further allegations are made therein, by way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children hereby denies such additional allegations as untrue.

35. Answering Paragraph 35 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required.

By way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

36. Answering Paragraph 36 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required.

By way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

37. Answering Paragraph 37 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required.

By way of further response, the Proposed Intervenor-Defendant Citizens

to Support MI Women and Children affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

COUNT I - MANDAMUS

38. Answering Paragraph 38 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children incorporates the answers of the foregoing paragraphs as if fully stated herein.

39. Answering Paragraph 39 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required.

By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

40. Answering Paragraph 40 of the Complaint, Proposed Intervenor-

Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required.

By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and

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

41. Answering Paragraph 41 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
42. Answering Paragraph 42 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
43. Answering Paragraph 43 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
44. Answering Paragraph 44 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
45. Answering Paragraph 45 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
46. Answering Paragraph 46 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children incorporates the answers of the foregoing paragraphs as if fully stated herein.

47. Answering Paragraph 47 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children admits the allegations contained therein.
48. Answering Paragraph 48 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, the Proposed Intervenor-Defendant Citizens to Support MI Women and Children affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.
49. Answering Paragraph 49 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.
50. Answering Paragraph 50 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this

- paragraph contains legal conclusions for which no response is required. By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.
51. Answering Paragraph 51 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
 52. Answering Paragraph 52 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children incorporates the answers of the foregoing paragraphs as if fully stated herein.
 53. Answering Paragraph 53 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
 54. Answering Paragraph 54 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
 55. Answering Paragraph 55 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.

56. Answering Paragraph 56 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.

57. Answering Paragraph 57 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.

COUNT II – INJUNCTIVE RELIEF

58. Answering Paragraph 58 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children incorporates the answers of the foregoing paragraphs as if fully stated herein.

59. Answering Paragraph 59 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, the Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

60. Answering Paragraph 60 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.

61. Answering Paragraph 61 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.

62. Answering Paragraph 62 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.

**MOTION FOR ORDER TO SHOW CAUSE
AND FOR IMMEDIATE CONSIDERATION**

63. Answering Paragraph 63 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

64. Answering Paragraph 64 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those

authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

65. Answering Paragraph 65 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children denies the allegations contained therein.
66. Answering Paragraph 66 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children neither admits nor denies the allegations contained therein with respect to RFFA's intended actions, being without sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof. In further answer, because the RFFA petition violates the form requirements under Michigan law, this proposal is ineligible to appear on the ballot, and therefore, any remaining allegations are denied.
67. Answering Paragraph 67 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

68. Answering Paragraph 68 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged. Answering further, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that Plaintiff's own *amicus*, the Michigan Attorney General, has found the "priority" provision of MCL 168.479(2) unconstitutional since it purports to establish a procedural rule that is within this Court's exclusive control, in violation of the separation of powers. OAG, 2019, No. 7310, pp 24-25 (May 22, 2019).

69. Answering Paragraph 69 of the Complaint, Proposed Intervenor-Defendant Citizens to Support MI Women and Children states that this paragraph contains legal conclusions for which no response is required. By way of further response, Proposed Intervenor-Defendant affirmatively asserts that the legal authorities cited therein speak for themselves, and that any conclusions drawn inconsistently with the plain wording of those authorities, or the case law interpreting them, are hereby denied as untrue in the manner and form alleged.

WHEREFORE, Proposed Intervenor-Defendant Citizens to Support MI Women and Children respectfully requests that this Court deny any and all injunctive relief, deny the Motion to Show Cause and dismiss with prejudice the Complaint For Immediate Mandamus Relief and *Ex Parte* Motion for Order to Show Cause.

Respectfully submitted,

THE SMITH APPELLATE LAW FIRM

By: /s/ Michael F. Smith
Michael F. Smith (P49472)
1717 Pennsylvania Ave. N.W., Suite 1025
Washington, D.C. 20006
(202) 454-2860
smith@smithpllc.com

DOSTER LAW OFFICES, PLLC

By: /s/ Eric E. Doster
Eric E. Doster (P41782)
2145 Commons Parkway
Okemos, MI 48864-3987
(517) 977-0147
eric@ericdoster.com

BURSCH LAW PLLC

By: /s/ John J. Bursch
John J. Bursch (P57679)
9339 Cherry Valley Ave. SE, Unit 78
Caledonia, MI 49316
(616) 450-4235
jbursch@burschlaw.com

*Counsel for Proposed Intervenor-Defendant
Citizens to Support MI Women and
Children**

Dated: September 6, 2022

* Motion to intervene and motion for immediate consideration pending

**PROPOSED INTERVENOR-DEFENDANT'S AFFIRMATIVE DEFENSES TO
COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF AND
EX PARTE MOTION FOR ORDER TO SHOW CAUSE**

Citizens to Support MI Women and Children, Proposed Intervenor-Defendant, pursuant to MCR 7.306(D)(2) files these affirmative defenses to the Complaint For Immediate Mandamus Relief and *Ex Parte* Motion for Order to Show Cause (the "Complaint"), as follows:

1. The extraordinary remedy of a writ of mandamus may not be granted under the present circumstances.
2. The extraordinary remedy of a writ of mandamus may not be granted to compel the Board to approve the form of a petition which does not strictly comply with the form requirements set forth in the Constitution and the Michigan Election Law.
3. The extraordinary remedy of a writ of mandamus may not be granted where there are disputed facts. In this situation, the Plaintiff claims that its petition does have spaces; however, there was ample evidence before the Board to demonstrate that the RFFA petition lacked word spaces between several words, thus creating from them nonexistent words, i.e. strings of letters bearing no meaning in the English language. This evidence included an affidavit of an experienced printer supplied by the Proposed Intervenor-Defendant, and even RFFA's own printer's affidavit did not contest there were no *word* spaces.

4. The extraordinary remedy of a writ of mandamus, an equitable remedy, may not be granted where the Plaintiff's own actions caused the Constitutional and statutory form violations before the Board. Unclean hands precludes equitable relief.
5. The extraordinary remedy of a writ of mandamus may not be granted because the purpose of mandamus is to enforce existing rights, not to create new ones. In other words, mandamus is the method of compelling the performance of a duty or enforcing a clearly defined existing right, rather than deciding what that right or duty is.
6. The extraordinary remedy of a writ of mandamus may not be granted to correct RFFA's defective petition because there is simply no mechanism which allows the Board, the Secretary of State, this Court, or any other individual or entity to fix RFFA's petition as only the People may propose amendments to the Constitution.
7. The extraordinary remedy of a writ of mandamus may not be granted because this Court may not substitute its judgment for that of the Board, or any member of the Board, in a mandamus proceeding.

Respectfully submitted,

THE SMITH APPELLATE LAW FIRM

By: /s/ Michael F. Smith
Michael F. Smith (P49472)
1717 Pennsylvania Ave. N.W., Suite 1025
Washington, D.C. 20006
(202) 454-2860
smith@smithpllc.com

DOSTER LAW OFFICES, PLLC

By: /s/ Eric E. Doster
Eric E. Doster (P41782)
2145 Commons Parkway
Okemos, MI 48864-3987
(517) 977-0147
eric@ericdoster.com

BURSCH LAW PLLC

By: /s/ John J. Bursch
John J. Bursch (P57679)
9339 Cherry Valley Ave. SE, Unit 78
Caledonia, MI 49316
(616) 450-4235
jbursch@burschlaw.com

*Counsel for Proposed Intervenor-Defendant
Citizens to Support MI Women and
Children**

Dated: September 6, 2022

* Motion to intervene and motion for immediate consideration pending