

STATE OF MICHIGAN  
IN THE SUPREME COURT

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

**MSC CASE #: 164760**

**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.**

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**BRIEF OF PROPOSED AMICI CURIAE MICHIGAN UNITED AND 1,295 SIGNEES  
OF THE REPRODUCTIVE FREEDOM FOR ALL PETITION**

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- Exhibit A – List of 1,295 Proposed Amici Signers of the Reproductive Freedom for All Petition
- Exhibit B – Copies of Declarations of Amici Signers of the RFFA Petition

## DEDICATION

“Democracy dies behind closed doors.”

*Detroit Free Press v Ashcroft*, 303 F3d 681, 683 (6<sup>th</sup> Cir 2002)  
(Opinion of Judge Damon Keith)

To the thousands of Michigan residents who volunteered to take part in our democracy by circulating the Reproductive Freedom for All petition, and the nearly 1 million Michigan residents who signed the petition. Democracy remains alive and well only so long as the average citizen, emboldened by their desire to see a better future, takes the responsibility of governing upon themselves. Democracy also requires that the rule of law is enforced by the institutions charged with upholding it.

To those Michiganders committed to upholding a strong, vibrant, and inclusive democracy in our state, we submit this brief in your honor. <sup>1</sup>

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<sup>1</sup> Further appreciation is owed to attorney Heather Cummings, Law Clerk Aaron Martinez, and Michigan United Policy Director Angana Shah for their help in preparing this brief.

## STATEMENT OF JURISDICTION

Proposed Amici Curiae agree with and join the Statement of Jurisdiction submitted by Plaintiff Reproductive Freedom for All.

## STATEMENT OF QUESTION PRESENTED

Proposed Amici Curiae agree with and join the Statement of Question Presented submitted by Plaintiff Reproductive Freedom for All.

## INTERESTS OF AMICI CURIAE

### Michigan United

Michigan United is a statewide organization of community members and institutions fighting for the dignity and potential of every person. We are committed to a participatory democracy at every level, an economy that works for the many, a nation that dismantles racism, and a society that uplifts our common humanity. To ignite the power of our communities and shift the balance of power, we cultivate the leadership of those directly affected by injustice and build popular institutions. Michigan United is affiliated with, but distinct from Michigan Voices, a party to the original litigation through its membership as a partner in Reproductive Freedom for All (RFFA).

Michigan United uses the tools of community organizing and civic engagement to advocate for change, and is deeply committed to ensuring that our government reflects the needs of all people in our state, not just the wealthy and powerful. Michigan United believes that one of the most powerful tools in our work for change is the voice of the people. Michigan United works year-round to uplift the voices in the communities we serve and make sure those communities which have historically been left out of the political process, especially working-class communities and communities of color, are fully engaged, have equal access to the vote, and to have their voices heard. Michigan United supports the rights of the 753,759 signers of the

RFFA petition to exercise their rights under the Michigan Constitution to petition their government and vote on ballot proposals that make changes to the Michigan Constitution.

Michigan United is a grassroots organization that supports democracy, social, racial and economic justice, and dignity and empowerment for every person in Michigan. Michigan United has firsthand knowledge of the experiences of those collecting signatures (circulators), and signers. Michigan United and its affiliates held training for staff and volunteer circulators so that they could understand and explain the petition, answer signers' questions, and know their rights while circulating.

This brief will provide the Court with historical and other factual information which will aid the Court in answering the questions posed in the complaint and brief in the main case captioned above.

#### 1,295 Signees of the Reproductive Freedom for All Petition

This brief is also submitted on behalf of 1,295 individuals who have declared themselves as having signed and understood the Reproductive Freedom for All petition this past year without confusion. These 1,295 individuals ("the Proposed Amici signers") are all registered voters in the state of Michigan who have a desire to exercise their constitutional right to vote on the RFFA proposal. The interests that the signers have in their right to vote on this proposal outweigh the interests of the Intervening Defendants and the two members of the Board of State Canvassers to keep it from voters.

A list of all Proposed Amici Signers is attached as Exhibit A.

## INTRODUCTION

There are no rights more central to our functioning democracy than the right to petition the government and the right vote. On August 31, 2022, the right to vote on the RFFA proposal was wrongfully stripped from over 8.1 million Michigan residents who are registered to vote, and those who will become registered to vote prior to November 8, 2022. In a deadlocked vote of 2-2, the Board of State Canvassers (the “Board”) refused to certify the RFFA ballot initiative for inclusion on Michigan’s November 2022 election ballot, despite the fact that 1) it is their duty to certify it, 2) their role is ministerial, they do not have authority to refuse to certify it and 3) the objections they cited for their refusal to certify are absurdly inconsistent with Michigan law.

## STATEMENT OF FACTS

Circulators of the RFFA ballot initiative petition collected 911,000+ signatures on the petition between March and July 2022. This represents almost 1 million voters, about 10% of Michigan registered voters. Of those collected signatures, 753,759 signatures were submitted to the Board of Elections on July 11, 2022 for verification and subsequent certification of the RFFA ballot initiative. The Bureau of Elections utilized a proper scientifically valid sampling procedure to determine whether the RFFA ballot question committee had submitted the requisite amount to be placed on the ballot. After sampling 510 signatures, the Bureau validated that the RFFA ballot initiative petition has well in excess of the signatures necessary for the proposal to be on the November 2022 ballot in Michigan and recommended that the RFFA proposal be certified for the November 2022 ballot.

During the August 31, 2022 hearing of the Board (the “Hearing”), the Board denied certification of the RFFA petition based on claims by objectors that the textual spacing between words on certain parts of the body of the petition was insufficient. The two Board members who voted against certification did not provide legal reasons for refusing certification but rather joined

the suggestions provided by some witnesses that this was confusing and voters could not know what they were signing. The printer has stated, and the electronic version of the petition confirmed, that the spaces are present, but are simply compressed. Despite stating the inconsistent spacing is “confusing,” witnesses claiming so were able to accurately read the text of the petition during the Hearing.

Since the date of the Board’s deadlock, commercials being aired on television by the Intervening Defendant, suggest that these alleged “errors” will be added to the Michigan Constitution, as they are on the petition. The suggestions being made by the Intervening Defendant are absurd and made in bad faith in an effort to deprive Michigan voters the opportunity to decide this issue themselves. The words will not be cut from signed petition pages and pasted into a single paper copy of the Michigan Constitution. Rather, should the RFFA proposal pass in November, according to MCL 168.486, the Board must make the final certification as to the language that will be provided to the Director of the Department of Management and Budget for inclusion in our constitution.

Signers of the RFFA petition knew what they were signing, why they were signing it, that it would be on the ballot if the petition had enough signatures, and understood the changes that would result if it passed in November. Signers were not confused by the form or text of the petition. There are 1,295 signers who, as of the filing of this amicus brief, have provided signed and date-stamped declarations that they knew what they were signing, they still understand it, they expect to vote on it, and they expect to vote on it this November. The declarations are attached as Exhibit B. This is a larger sample size of signers than the 510 signatures examined as a representative sample by the Board of Elections in validating the petition. If the RFFA ballot proposal is not on the November 2022 Michigan statewide ballot, the voices of the almost one million Michigan voters who signed will be unconstitutionally silenced, as will the voices of all



Michigan voters who have the right to vote on it through the process that is prescribed in the Constitution and has been fulfilled by RFFA.

## ARGUMENT

### **I. Standard of Review**

The Court reviews de novo whether a defendant had a clear legal duty to perform and whether the plaintiff had a clear legal right to the performance of that duty. *In re MCI*, 460 Mich 396, 442-443 (1999); *Citizens for Protection of Marriage v Board of State Canvassers*, 263 Mich App 487, 491-492 (2004).

### **II. The Board of State Canvassers failed to exercise its ministerial duty to qualify the Reproductive Freedom for All petition without legal cause.**

Michigan law clearly provides that the Board is an executive agency, which does not have any authority which has not otherwise been provided to it within the Michigan Constitution or by the Michigan Legislature. *Belanger & Sons, Inc v Dep't of State*, 176 Mich App 59, 62-63 (1989); *Pharris v Secretary of State*, 117 Mich App 202, 204 (1982). The Board's authority and duties with regard to proposed constitutional amendments are limited to determining whether the form of the petition substantially complies with the statutory requirements and whether there are sufficient signatures to warrant certification of the proposal. MCL 168.476; see also *Unlock Michigan v Board of State Canvassers*, 507 Mich 1015 (2021); *Stand Up v Secretary of State*, 492 Mich 588, 618-619 (2012).

Here, there is no dispute or challenge as to whether the RFFA proposal has submitted a sufficient number of signatures. In the eleventh-hour, opponents of the RFFA petition have manufactured their concern under the guise of “form.” While the term “form” is not defined within the Michigan Election Law itself, it can be found in the Black’s Law Dictionary (10<sup>th</sup> ed) defined as “the outer...structure of something, as distinguished from its substance or matter.”

MCL 168.482 sets the statutory standard for form which the Board is required to adhere to, and in order to satisfy the statute, a petition must:

1. Be printed on size 8.5 inch x 14 inch paper;
2. Contain the proper heading in 14 point font;
3. Have a summary of the proposal in not more than 100 words, in 12 point font;
4. Have the full text of the amendment following the summary, in 8 point font; and
5. Have the warnings and acknowledgements required by subsections (5) (6), (7), and (8) of the statute, in their proper font sizes.

Notably absent from the list of statute's mandated form requirements is any mention of the sizing of spacing between words. This is a requirement that was manufactured by the two Board members opposed to certification in an attempt to provide a "plausible cover" for their illegal actions.

The members of the Board who voted against certification of the petition seek to interfere with the sacred right of Michigan voters to propose amendments to our state constitution. In as early as 1918, it had been recognized by the Michigan Supreme Court that: "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 (1918)(emphasis added). The Board, by weighing the unfounded claims of a few as equal to the 753,759 signatories of the petition, abrogated its duty to certify and subverted the right of the qualified voters of this State.

This Honorable Court should send a strong message that manufactured antics like those that have played out in recent days will not derail democracy in the state of Michigan by firmly upholding the plain meaning of the Michigan Election Law and MCL 168.482.

**III. Granting the immediate mandamus relief sought by Plaintiff is the only proper remedy to protect the rights of 753,759 Michigan voters who signed the RFFA petition**

A writ of mandamus shall issue only where (1) the plaintiff has a clear legal right to the performance of a specific duty; (2) the defendant has a clear legal duty to perform the requested act; (3) that act is ministerial; and (4) the plaintiff has no other legal or equitable remedy. *Taxpayers for Mich Constitutional Gov't v Michigan*, 508 Mich 48, 82 (2021). Although mandamus “will lie to require a body or an officer charged with a duty to take action in the matter, notwithstanding the fact that the execution of that duty may involve some measure of discretion ..., mandamus will lie to compel the exercise of discretion, but not to compel its exercise in a particular manner.” *Teasel v Dep't of Mental Health*, 419 Mich 390, 410 (1984).

Plaintiff has competently explained the standards and considerations which this court must engage in when considering whether to issue a writ of mandamus in this immediate case. Proposed Amici only seeks to add that without the immediate mandamus relief being sought by the Plaintiff, the Proposed Amici signers of the RFFA petition have no other recourse to ensure that they still have the right to meaningfully participate in their government the way that the Constitution of the State of Michigan provides under Article 12.

Mandamus relief is the **only** available remedy to the 753,759 Michigan residents, including the 1,295 Amici signers herein who submitted valid signatures in support of the RFFA proposal.

Further, mandamus relief is the **only** available remedy to the 8.1 million voters who are registered in the state of Michigan. Assuming only for the sake of argument that some of these voters do not support the RFFA proposal, the antics by the Board improperly denies those individuals with the ability to be heard on this important issue. Because the RFFA proposal satisfies both the signature requirement found in Const 1963, Article 12, Section 2, and the

statutory form requirements of MCL 168.482, the Board had a ministerial duty to certify the petition for the November 2022 general election ballot.

### CONCLUSION

The Board of State Canvassers failed in its legal duty to certify the RFFA proposal for the November ballot. This Court should send a strong message that the voices of the Michigan electorate should have the final say on this important issue. For the preceding reasons herein, the Proposed Amici respectfully request that this Honorable Court take the following actions:

- A. Issue a writ of mandamus directing Defendants to take all actions necessary to certify the petition to appear on the November 8, 2022 general election ballot pursuant to Const 1963, Art 12, Section 2; and
- B. Remand this matter to the Secretary of State and the Bureau of Elections with an order that the Secretary must include the RFFA proposal with the ballot statement approved by the Board at its August 31, 2022 meeting when the Secretary certifies to county clerks the contents of the ballot for the November 8, 2022 general election.

Respectfully submitted,

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