

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,

Supreme Ct. Case No. 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.

**BRIEF OF PROPOSED *AMICUS CURIAE* NEAL GOLDFARB IN SUPPORT OF
PLAINTIFFS' COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF**

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INTEREST OF THE *AMICUS CURIAE*¹

Neal Goldfarb is an attorney with an interest and expertise in linguistics and lexicography, and in applying insights from those fields to legal interpretation. Over the past 14 years, he has written extensively about the latter topic, in law reviews; linguistics journals; unpublished papers that are available on Social Science Research Network (SSRN—an online repository for uploading preprint articles and working papers); amicus briefs; and posts at his blog, LAWnLinguistics. Much of Mr. Goldfarb’s work has focused on the use of corpus linguistics, which he helped to pioneer, having filed in the United States Supreme Court the first brief ever filed in any court that relied on corpus analysis.

As a result of his expertise and experience, Mr. Goldfarb is able to offer this Court a unique perspective on the linguistic issue at the heart of this case: whether the seeming absence of word spacing from portions of Plaintiff Reproductive Freedom for All’s petition resulted in the transformation of the affected words into meaningless and incomprehensible non-words.

¹ Per MCR 7.312(H)(4), Amicus Curiae states that no counsel for a party authored this brief in whole or in part, and no person, other than amici or their counsel, made a monetary contribution intended to fund the preparation or submission of the brief.

STATEMENT OF JURISDICTION

The jurisdictional statement of Plaintiffs is correct.

STATEMENT OF QUESTION PRESENTED

Citizens to Support MI Women & Children (“WAC”) argued before the Board of State Canvassers that in the revised version of the petition that was submitted after the conditional approval of the originally submitted petition (which was the version on which signatures were obtained), the spacing between the words in parts of the proposed constitutional amendment’s text had been removed. WAC further argued that the asserted removal of the word spacing “eliminated dozens of words previously set forth in the text and replaced them with a hodgepodge of non-sensical gibberish.”² WAC described the affected portions of the text as “nonsensical groupings of letters that are found in no dictionary and are incapable of having any meaning[,]” as “letters run together in meaningless fashion, signifying nothing[,]” and as mere “nonsensical collections of letters[.]”³ Based on these premises, WAC argued that the relevant portions of the proposed constitutional amendment do not consist of or include any “actual words[,]” and that as a result the petition failed to set out the proposed amendment’s full text.⁴

Assuming that WAC is correct in describing inter-word spacing as having been “removed” from the revised petition (and a fortiori if it is mistaken about that point), is WAC correct in its characterization of the effect of the removal?

- | | |
|--|----------------|
| Amicus’s answer: | No |
| Plaintiffs’ answer: | No |
| Proposed Intervenor-Defendant’s answer: | Yes |
| Defendant Michigan Secretary of State’s answer: | Presumably No |
| Defendant Bureau of Elections Director’s answer: | Presumably No |
| Defendant Michigan Board of State Canvassers: | |
| Board Members Gurewitz and Bradshaw | Presumably No |
| Board Members Daunt and Houskamp | Presumably Yes |

² WAC Challenge, Plaintiff’s App’x C, at 13.

³ *Id.* at 13-15, 20.

⁴ *Id.* at 18, 20, 21, 26.

INTRODUCTION

WAC refers to the portions of the revised Petition at issue in this case as “a hodgepodge of nonsensical gibberish,” as “nonsensical groupings of letters that are found in no dictionary and are incapable of having any meaning[.]” as “letters run together in meaningless fashion, signifying nothing[.]” and as “nonsensical collections of letters.” WAC Challenge, Plaintiff’s App’x C, at 13, 14, 15, 20. It therefore contends that those portions of the revised Petition do not include any “actual words[.]” and that as a result the petition failed to set out the proposed amendment’s full text. *Id.* at 18, 20, 21, 26.

Although Plaintiffs have submitted evidence that no inter-word spacing was removed from the revised petition, Amicus assumes for the purposes of this brief that such spacing was in fact removed, as WAC contends. Because even on that assumption (and *a fortiori* if WAC is mistaken about this point), WAC’s characterization of the effect of that removal is wrong.

WAC recognizes that when the “collections of letters” at issue appeared in the original petition, they constituted words. Indeed, it contends that as a result of the revision, those words were “eliminated.” (WAC Challenge, Plaintiff’s App’x C, at 13.) But the fact is that every one of the words appears in the revised text, in the exact same order as in the original petition. This is patently obvious from merely looking at the relevant portions of the text: every one of the original words can be recognized, as shown in this example:

**DECISIONSABOUTALLMATTERSRELATINGTOPREGNANCY
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DECISIONSABOUTALLMATTERSRELATINGTOPREGNANCY
DECISIONSABOUTALLMATTERSRELATINGTOPREGNANCY
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DECISIONSABOUTALLMATTERSRELATINGTOPREGNANCY
DECISIONSABOUTALLMATTERSRELATINGTOPREGNANCY**

If a literate speaker of English were to be shown one of these “collections of letters,” and was asked to read it aloud, they would probably be puzzled at first. Soon, however, he or she would realize that the string of letters was in fact a string of words, albeit words that had been smushed together due to the removal of the inter-word spaces that had been readily visible in the original Petition. Upon that recognition, they would be able to read it, albeit perhaps somewhat hesitantly:

“decisions...about...all...matters...relating...to...pregnancy”

And in addition to recognizing that the “collections of letters” were composed of words, and being

able to read them out loud, our hypothetical speaker of English would be able to understand each of the relevant word strings.

WAC is therefore asking the Court to close its eyes to what is patently obvious. And it bases that request entirely on a definition of *word* that appears in a single dictionary:

A unit of language, consisting of one or more spoken sounds or their written representation, that functions as a principal carrier of meaning, is typically seen as the smallest such unit capable of independent use, *is separated from other such units by spaces in writing*, and is often distinguished phonologically, as by accent or pause.

Random House Webster's College Dictionary 1506 (2001) (emphasis added); see WAC Challenge, RFFA App'x C, at 19.

To the extent that the italicized portion of this definition is understood to suggest that the separation of written words by spaces is an essential aspect of “wordhood,” it is impossible to square with the fact that individual word-forms are recognizable in the text despite the absence of spaces, and that they can be understood *as words*.

That by itself is a sufficient basis for rejecting WAC's argument. However, it is by no means the only basis for doing so. As *Amicus* will show, WAC's reading of the definition is one that no reasonable lexicographer would endorse. And more importantly, the definition is, on WAC's reading, demonstrably inaccurate.

ARGUMENT

I. **No reasonable lexicographer would endorse WAC's hyperliteral reading of the definition upon which WAC relies.**

A. **Lexicographers do not regard the definitions they write as definitely establishing the meaning of the word being defined.**

In evaluating the definition upon which WAC relies, it will be useful to keep in mind some observations made by the lexicographer Patrick Hanks, who has been described as “the ideal lexicographer's lexicographer.”⁵ Hanks has referred to lexicographers as “masters of the unsubstan-

⁵ Gilles-Maurice de Schryver, *Getting to the Bottom of How Language Works* (quoting statements by the lexicographers Sue Atkins and Michael Rundell, respectively), in *A Way with Words: Recent Advances in Lexical Theory and Analysis: A Festschrift for Patrick Hanks* 3, 4, 8 (Gilles-Maurice de Schryver ed. 2010).

tiated assertion”⁶ and has criticized the widespread idea that dictionaries can provide “completely analytical definition[s],” by which he means definitions that precisely delineate a word’s meaning.⁷ Such definitions, he suggests, paper over the complexities of actual usage.⁸ He therefore argues that rather than providing precision, “[w]hat a good dictionary offers...is a typification”—a summary of “what the lexicographer finds to be the most typical common features” of the word’s use.⁹

Thus, while WAC interprets the definition as establishing that written words are always separated by spaces, the definition is more appropriately understood as a “typification” of the kind Hanks refers to, and therefore as indicating only that written words are *ordinarily* separated by spaces, not that they always are.

B. Lexicographers would take into account the fact that the definition of *word* in several other dictionaries (including Random House’s unabridged dictionaries) recognize that written words are not invariably separated by spaces.

If a lexicographer were to be asked to evaluate the definition upon which WAC relies, it is likely that the first thing they would do would be to look at the definitions of *word* in other dictionaries. And upon doing so, they would learn that in several major dictionaries (the *Oxford English Dictionary*, the *New Oxford Dictionary of English*, and the Merriam-Webster dictionaries), the relevant definition said that words are “normally,”¹⁰ “typically,”¹¹ or “ordinarily”¹² separated by spaces. Hanks would undoubtedly approve.

The three dictionaries referred to in the previous paragraph are not the only ones that a careful lexicographer would consult. A lexicographer would know that in addition to publishing college dictionaries like the one that WAC cites, Random House publishes an unabridged dictionary as well, with the first edition of the unabridged having been published in 1966 and the second in 1987, and with an updated version of the unabridged dictionary being available online

⁶ Patrick Hanks, *Lexical Analysis: The Theory of Norms and Exploitations* 145 (2013).

⁷ *Id.* at 86–87 (quoting Patrick Hanks, *To What Extent Does a Dictionary Definition Define?*, in *Dictionaries and Their Users* (R.K. Hartmann ed. 1979)).

⁸ *See id.* at 334–37.

⁹ *Id.* at 86–87 (quoting *To What Extent Does a Dictionary Definition Define?*, *supra* note 7).

¹⁰ *Oxford English Dictionary*, word *n.*, sense 12 (3d ed. 2022), bit.ly/OEDword.

¹¹ *New Oxford American Dictionary*, word *n.*, at 1990 (3d ed. 2010).

¹² *Merriam-Webster’s Third New International Dictionary*, word, *n.*, sense 2b, at 2633 (1961/1993); *Merriam-Webster’s Collegiate Dictionary*, word *n.* sense 2b(1), at 1442 (11th ed. 2003).

at Dictionary.com.¹³ They would know that an unabridged dictionary is more comprehensive than a college dictionary, and they would know (or at least assume) that after the unabridged dictionaries were published, the unabridged dictionaries provided the sources on which the college dictionaries were based.¹⁴ A lexicographer would therefore consult at least one edition of the unabridged dictionary, and quite possibly all three.

But whichever edition of the Random House Unabridged the lexicographer looked at, the answer they would find would be the same: **all three versions described words as “usually [being] separated by spaces in writing.”**¹⁵ And because the college dictionaries were based on the unabridged dictionaries, the lexicographer would regard the latter as more definitively reflecting the collective judgment of Random House’s lexicographers.

C. Under WAC’s reading of the definition it relies on, lexicographers would most likely regard the definition as unreliable, because it is subject to being proved wrong by evidence of actual linguistic usage.

In drafting definitions, lexicographers aim to accurately reflect the facts of actual usage, to the maximum extent possible. Therefore, given a choice between two definitions of a word, one that could be easily be proven to be inaccurate and the other that could not, reasonable lexicographers would, all else being equal, prefer the latter. In the context of the issue before the Court, such lexicographers would therefore prefer the definitions from the unabridged Random House dictionaries over WAC’s reading of the definition on which it relies.

WAC’s reading of its preferred definition could be shown to be inaccurate by evidence that words in written texts are not always separated by spaces. In contrast, the definitions in the unabridged dictionaries are much more resistant against being shown to be inaccurate. In order to make such a showing, it would presumably be necessary to demonstrate, at a minimum, that words are *never* used in writing without being separated by spaces—a proposition that no finite quantum of evidence could possibly establish. No matter how much evidence could be accumulated, one could never declare the search for evidence complete. And even if that were not the case, it is not

¹³ See about, Dictionary.com, <https://www.dictionary.com/e/about/>; Henri Béjoint, *The Lexicography of English* 135–36, 141 (2010).

¹⁴ See sources cited in n.13, *supra*.

¹⁵ *Random House Unabridged Dictionary*, word, *n.*, <https://www.dictionary.com/browse/word> (2022) (emphasis added); *Random House Webster’s Unabridged Dictionary*, word, *n.*, at 2188 (2d ed. 1987) (emphasis added); *Random House Dictionary of the English Language Unabridged* word, *n.* at 1642 (1st ed. 1966) (emphasis added).

clear that the evidence really disproved the definition. After all, the proposition that X always happens arguably entails the “lesser included proposition” that X *ordinarily* happens. It follows that there is no rational basis for preferring WAC’s hyperliteral reading of the definition.

II. In actual usage, Written Words Are Not Always Separated By Spaces.

WAC argues that words in a text that are written or printed without any inter-word spacing are—despite all appearances—not really words, because the absence of spacing transforms the words into nonwords. *Amicus* has shown that this contention is not supported by the only argument that WAC offers in its support, namely its invocation of a flawed dictionary definition. But even if WAC’s definition-based argument were stronger, it would still fail, because dictionary definitions are less important than the facts of actual linguistic usage. And those facts make it clear that words are words whether or not they are separated by spaces, and that omitting of inter-word spacing does not transform the text into gibberish.

Although words are typically separated by spaces in most of the world’s writing systems, there currently exist writing systems (e.g., Thai) in which such spacing is not used.¹⁶ Other such systems existed in the past: Latin was written without inter-word spacing for hundreds of years, as was ancient Greek.¹⁷ And the practice has a name: *scriptio* (or *scriptura*) *continua*, which is Latin for “continuous writing”.¹⁸ There is a substantial body of academic work regarding the practice of *scriptio continua*, and as far as *amicus* is aware, that work takes it for granted that despite the absence of inter-word spacing texts written in *scriptio continua* are in fact made up of words.¹⁹

¹⁶ Benjawan Kasisopa et al., *Eye Movements While Reading an Unspaced Writing System: The case of Thai*, 86 *Vision Research* 71 (2013).

¹⁷ See, e.g., Wikipedia, *Scriptio continua*, https://en.wikipedia.org/wiki/Scriptio_continua.

¹⁸ *Id.*

¹⁹ See, e.g., M.B. Parkes, *Pause and Effect: Punctuation in the West* passim (1992); Marika Butskhrikidze, *What Do Modern Languages with Scriptio Continua Have in Common?*, 72 *Journal of Linguistics/Jazykovedný casopis* 821 (2021); Tom Finbow, *Scriptura continua: A Problem for Logographic Reading of Archaic Words in Late Latin / Early Romance?*, in 9 *Oxford University Working Papers in Linguistics, Philology and Phonetics* (Richard Ashdowne & Tom Finbow, eds. 2004); Jan Heilmann, *Reading Early New Testament Manuscripts: Scriptio continua, “Reading Aids”, and Other Characteristic Features*, in *Material Aspects of Reading in Ancient and Medieval Cultures. Materiality, Presence, and Performance* (Anna Krauß et al. eds. 2020); Kasisopa et al., *supra* n.16, 86 *Vision Research* at 71; Kaaren Moffat, *The ‘Grammar of Legibility’: Word Separation in Ogam Inscriptions*, in 22/23 *Peritia: Journal of the Medieval Academy of Ireland* 281 (2011/2012).

Although inter-word spacing is an established feature of the writing system of English, that does not mean that *scriptio continua* is never used. For example, it is sometimes used when the writer wants to make the point that although we take word-spacing for granted, the reality is that it isn't strictly necessary. The use of *scriptio continua* in the heading to this section of the brief falls into that category. Another example of *scriptio continua* being used for this purpose is found in a recent book (by the linguist David Crystal) about punctuation:

There are two extreme views about punctuation.
the first is that you don't actually need it because its perfectly possible to write down what you want to say without any punctuation marks or capital letters and people can still read it **youdontevenneedspacesbetweenwords** really they dont exist when we speak to each other after all and yet we nonetheless or should it be none the less understand what people are saying

David Crystal, *Making a Point: The Persnickety Story of English Punctuation* ix (2015) (emphasis added; absence of capitalization, punctuation, and spacing in the original).

Scriptio continua has also been discussed in at least one book about typography (*Inside Paragraphs: Typographic Fundamentals*, by Cyrus Highsmith (2010)), which is significant given that word-spacing is one aspect of typesetting.²⁰ In fact, that book's discussion of word-spacing leads off with statement that "[p]utting space between words wasn't always done."²¹ The book continues:

In the ancient Roman world, writing was done in *scriptura continua*. One word just bled into the next one without any space in between. As a modern reader you'll find that this will slow you down, *but you can still read text without word spaces if you try*. Think of the URLs we decipher every day. Sometimes we get stuck momentarily on something new, but we can figure it out.

Id. (emphasis added). Another author, Ellen Lupton, indulges in a line of *scriptio continua* in order to make the point that text without word spacing isn't easy to read:

“Tryreadingalineoftextwithoutspacingtoseehowimportantithasbecome.”²²

But while this sentence is effective in conveying Lupton's intended message, the fact that it is comprehensible serves to bolster Highsmith's point that although text without word-spacing is

²⁰ Cyrus Highsmith, *Inside Paragraphs: Typographic Fundamentals* 61–63 (2010).

²¹ *Id.* at 61.

²² Ellen Lupton, *Thinking with Type: A Critical Guide for Designers, Writers, Editors & Students* 91 (2d ed. 2010).

more difficult to read, it is not impossible. Stated differently: Lupton’s spaceless sentence is not gibberish.

As suggested by Highsmith’s reference above to URLs, *scriptio continua* has proliferated on the internet. Its use is extremely common in URLs, hashtags, and Twitter handles, as in the following examples:

URLs	Hashtags	Twitter handles
uscourts.gov/	#TrendingNow	@TheOnion
michbar.org/	#sundayvibes	@PNCBank
millercanfield.com	#fightingvideos	@Popehat
www.detroitlions.com/	#BREAKOUTSTOCKS	@FrogandToadbot
www.fox2detroit.com/	#HappyNewMonthFam	@DiscordianKitty
michiganadvance.com/	#labordaysale	@sleepnumber
michiganpress.org/	#HowItStarted	@shinyribs
milawyersweekly.com/	#HowItsGoing	@lawfareblog
howappealing.abovethelaw.com	#AppellateTwitter	@howappealing

Scriptio continua even turns up in the URLs (and a Twitter handle) used by WAC and its counsel:

WAC’s website	supportmiwomenandchildren.org/
WAC’s Twitter handle	@miwomenchildren
WAC’s counsel’s websites:	
—Eric Doster	ericdoster.com
—Michael Smith	smithpllc.com
—John Bursch	www.burschlaw.com

It seems safe to assume that when WAC and its counsel chose the URLs for their respective websites, and when WAC chose its Twitter handle, none of them thought that their choices amounted to incomprehensible gibberish. And there was no reason for them to entertain such a thought, because despite the absence of inter-word spacing, both the URLs and the Twitter handle were readily comprehensible.

III. The fundamental flaws in WAC’s position are not mitigated, much less cured, by its vague gesture toward the literature on word identification and typography.

WAC’s position, reduced to its essence, is that due to the absence of word spacing from parts of the petition, the petition fails to set out the full text of the proposed constitutional amendment. That conclusion follows, according to WAC, because the absence of spacing transformed

the affected text into incomprehensible gibberish, thereby “eliminat[ing] dozens of words previously set forth in the text[.]”²³ As the discussion above has shown, that argument is nonsense.

That conclusion is not called into doubt by the academic and professional literature that WAC discusses on pages 39–40 of its brief. Nothing that WAC says there, and nothing in the literature it cites, supports the claim that the affected portions of the text are gibberish or that they are not composed of actual words. At most, they show only text without inter-word spacing is more difficult to understand than text that does include such spacing. That point is not in dispute. But it is irrelevant.

WAC’s underlying argument is not merely that the affected portions of the petition were hard to understand. Rather, it makes the much more extreme argument that those portions of the text are utterly incapable of being understood. They are, it insists, total gibberish—“non-words” rather than “actual words,” “nonsensical groupings of letters that are found in no dictionary and are incapable of having any meaning[.]” “letters run together in meaningless fashion, signifying nothing[.]” mere “nonsensical collections of letters[.]”²⁴ And those extreme claims are essential to its challenge to the position, because they are what WAC relies on to justify its argument that the petition fails to set out the full text of the proposed constitutional amendment. The stated basis for that argument is that the absence of word spacing “eliminated” parts of that text.²⁵

Nothing in the literature cited by WAC provides the slightest support for that over-the-top contention. Nowhere in that literature is there any suggestion that removing the spaces between the words in a text somehow transforms those words into meaningless and incomprehensible “non-words.” Quite the contrary. The literature takes for granted that the effect of removing inter-word spacing from a text is that...the words in the text aren’t separated by spaces. The fact that removing the spaces makes the words harder to understand is irrelevant; words are words, even when they are hard to understand.

Moreover, once it becomes clear that the petition circulated by RFFA did contain the full text of its proposed constitutional amendment, another problem comes into view. To the extent that WAC wants to argue that some of the words in the petition are difficult to understand, that is an issue relating to the petition’s content, not its form. So not only does the academic and pro-

²³ WAC Challenge, Plaintiffs’ App’x C, at 18, 20, 21, 26.

²⁴ *Id.* at 13–15, 18, 20, 21, 26; WAC Brief in Opposition at 1, 2, 4, 5, 12, 18, 19, 32.

²⁵ WAC Challenge, Plaintiffs’ App’x C, at 13.

fessional literature that WAC cites fail to support its challenge, it actually provides a basis for denying it.

RELIEF REQUESTED

WAC’s challenge to RFFA’s petition should be rejected.

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CERTIFICATION OF WORD COUNT

Pursuant to MCR 7.312 and MCR 7.212(B)(1), counsel certifies that this brief contains 4,140 words, as measured by Microsoft Word’s count function.

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PROOF OF SERVICE

Counsel certifies that on the date below, she caused a copy of this brief to be served upon all counsel of record by the electronic service function of the Court’s TrueFiling system.

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