STATE OF MICHIGAN
IN THE SUPREME COURT

PROMOTE THE VOTE 2022

Plaintiff,

v.

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

Defendants.

Supreme Court No. _____

THIS MATTER INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.

PLAINTIFF PROMOTE THE VOTE 2022'S COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF AND DECLARATORY JUDGMENT AND MOTION FOR ORDER TO SHOW CAUSE AND IMMEDIATE CONSIDERATION

*****IMMEDIATE AND EXPEDITED CONSIDERATION BY SEPTEMBER 8, 2022 REQUESTED*****

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> There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, now between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this Court.

Plaintiff Promote the Vote 2022 ("PTV22"), through counsel Clark Hill PLC, for its Complaint for Immediate Mandamus relief against the Board of State Canvassers (the "Board"), Jocelyn Benson ("Secretary Benson"), in her official capacity as Secretary of State, and Jonathan Brater ("Director Brater"), in his official capacity as Director of Elections, states as follows:

INTRODUCTION

Article 12, Section 2 of the Michigan Constitution unambiguously provides the People of the State of Michigan with the power to amend their constitution:

> Amendments may be proposed to this constitution by petition of the registered electors of this state. [*See* Const 1963, art 12, § 2.]

This Court has previously held that this right is sacrosanct and cannot be interfered with by the legislature, the courts, or any other branches of government:

> 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 this Court wrote it over 100 years ago. PTV22 filed with the Secretary of State 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 the Board seeking to block certification.[1]

DYV did not argue 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 could DYV do so; the Staff Report released by the Bureau of Elections on August 25, 2022 indicated that PTV22 had the requisite number of valid signatures and recommended certification to the ballot. PTV22 only needed to submit 425,059 valid signatures and the Bureau of Elections concluded using its long-standing sampling methodology that PTV22 submitted **507,780 valid signatures at a confidence level of 100%**. (*See* Ex. 1, Staff Report.) Nor did DYV challenge the form of the petition, which was previously approved by the Board in February 2022. (Ex. 2, 2/11/22 Meeting Minutes.)

Rather, in what can only be interpreted as a desperate attempt to silence the voices of more than a half million Michigan voters, DYV argued before the Board 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. (Ex. 3, DYV's Challenge.) As shown below and throughout, DYV's Challenge failed on the law and facts and bordered on the frivolous.

This 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: "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) (Zahra, J) (also "reaffirm[ing] our prior case law holding that an existing provision is only

[1] During the August 31, 2022 hearing, DYV all but abandoned four of their five challenges and focused on their claim that the Proposal abrogated Article 2, Section 2.

altered when the amendment actually adds to, deletes from, or changes the wording of the provision."). This make sense when considering that the purpose of the republication 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, DYV's Challenge did not plausibly 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.

Applying those standards leaves no doubt that DYV's Challenge was legally and factually deficient and that the Board should have rejected it and certified the Proposal for the November 2022 General Election Ballot. Instead, the Board deadlocked along party lines, meaning that the proposal was not certified for the ballot. In so deadlocking, the Board failed to perform its clear legal duty when presented with a ballot proposal that has collected more than the minimum number of signatures required on a petition form previously approved by the Board. Rather, the two dissenting Board members abdicated their oaths to follow the law, went beyond their statutory duties by conducting a judicial review of whether a provision of the Constitution was "abrogated," and put their personal partisan politics over the rule of law. The Court should not carry this mistake forward.

There is no dispute that PTV22 submitted more than enough signatures and there is no dispute about the form of the petition. There is also no dispute that the Board chose to ignore that it had already approved the petition form, even against arguments opponents of the Proposal put forth at the February 11, 2022 Board meeting. Finally, there is no dispute that DYV's Challenge fails on the merits. The Court should therefore issue a writ of mandamus requiring the Board to fulfill its clear legal duty by immediately certifying the Proposal and requiring Secretary Benson

and Director Brater to take all steps necessary to place the Proposal on the ballot for the November 2022 General Election.

PROCEDURAL HISTORY

On July 11, 2022, PTV filed over 664,000 signatures with the Bureau. On August 18, 2022, DYV submitted a challenge to the form of the petition, arguing that the petition failed to include all of the constitutional provisions that would be abrogated by the proposed amendments. PTV22 filed a Response to the Board on August 23, 2022 setting forth the applicable standard – something DYV and the two GOP members of the Board glossed over – for determining whether a constitutional amendment would abrogate a current constitutional provision. (Ex. 4, PTV22's Response to DYV's Challenge.) The Response set forth, under the applicable standard, that each and every one of DYV's claims failed as a matter of law.

On August 25, 2022, the Bureau of Elections released its Staff Report recommending certification of the Proposal for the November 2022 General Election Ballot. (*See* Ex. 1, Staff Report.) The Staff Report did not take a position on the DYV's Challenge because it "raise[d] legal arguments pertaining to the meaning of the Michigan Constitution as interpreted by the Michigan Supreme Court." (*Id.* at 5.) However, the Staff Report recommended certification of the Proposal on the basis of PTV22 having submitted more than a sufficient number of signatures. (*Id.* at 6.)

On August 31, 2022, the Board met to consider certification of the Proposal, among other business. (Ex. 5, 8/31/22 Agenda.) PTV22, through counsel, appeared and urged the Board to reject DYV's Challenge and to, consistent with the Bureau of Elections' Staff Report, certify the Proposal for the November 2022 General Ballot. DYV, also through counsel, appeared and urged the Board to reject the Proposal consistent with the arguments it made in its Challenge. Ultimately,

Member Bradshaw made a motion to certify the Proposal. The motion deadlocked along party lines.[2]

Now, PTV22 brings this mandamus action asking the Court to compel the Board to perform its pure ministerial duty and certify the Proposal for the November 2022 General Election Ballot. The Board is scheduled to meet September 9, 2022 and a decision by this Court is therefore needed prior to that meeting.

PARTIES, JURISDICTION, AND VENUE

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

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

[2] During the August 31, 2022 meeting, as counsel for PTV22 was presenting his argument, Member Daunt disclosed that he was having *ex parte* communications with attorney Robert Avers (P75396) from Dickinson Wright PLLC about case law applicable to the Challenge and PTV22's Response. Mr. Avers represents Secure MI Vote, which is a ballot question committee that seeks to amend the Michigan Election Law and also opposes the Proposal. Indeed, Mr. Avers appeared at the February 11, 2022 hearing on behalf of Secure MI Vote and opposed the approval of the form of the Proposal. Mr. Avers also spoke against certification of the Proposal at the August 31, 2022 Board hearing on behalf of Secure MI Vote. Stated differently, Member Daunt was taking *ex parte* legal advice from an attorney representing an opposing ballot committee during the hearing rather than the Assistant Attorney General that represents the Board and provides them with legal advice and counsel.

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

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

> Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

> Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.
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> The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.
>
> If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail. [*See* Const 1963, art XII, § 2.]

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

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

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

13. The seminal case on whether a proposed ballot question would alter or abrogate a provision of the Michigan Constitution is *Protect Our Jobs*, which held that "an amendment only

abrogates an existing provision when it renders that provision wholly inoperative" and "reaffirm[ed] our prior case law holding that an existing provision is only altered when the amendment actually adds to, deletes from, or changes the wording of the provision." *Protect Our Jobs*, 492 Mich at 773.

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

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

16. Against this backdrop, the Court held that, consistent with decades of precedent,[3] 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).

17. Stated differently, "[a] new constitutional provision simply cannot alter an existing provision (though it may abrogate an existing provision) when the new provision leaves the text of all existing provisions completely intact." *Id.* at 782.[4] Thus, "[t]he republication requirement

[3] 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.

[4] While DYV's Challenge did 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

applies only to alteration of the actual text of an existing provision." *Id.* (citing *Massey*, 457 Mich at 418).

18. The Court provided some examples of where republication on the basis of alteration would be required, such as if an amendment added words to an existing provision; if an amendment deleted words from an existing provision; or changed the words of an existing provision. *Id.* The Court also held that "there is no such thing as a de facto or an indirect addition to, deletion from, or change in an existing provision. ***The fact that a proposed amendment might have a direct and obvious effect on the understanding of an existing provision is an insufficient basis from which to conclude that the proposed amendment alters an existing provision of the Constitution***." *Id.* (emphasis added).

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

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

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it is based provides context for the Court and also makes clear that the identified provisions would be neither altered nor abrogated by the Proposal if it is adopted by the People in November.

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

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

23. These standards were again applied by this Court to reject a claim that the proposal submitted by Voters Not Politicians abrogated the oath requirement set forth in Article 11, Section 1. This Court reasoned that Voters Not Politicians' "proposal in no way 'renders [the Oath Clause] wholly inoperable.'" *Citizens Protecting Michigan's Constitution*, 503 Mich at 106, n 197 (alterations in original) (quoting *Protect Our Jobs*, 492 Mich at 773).[5]

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

[5] 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 and statutory safeguards to ensure that voters are adequately informed when deciding whether to support a constitutional amendment initiative:

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

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

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

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

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

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

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

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

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

31. Taking this oath places on the Secretary of State and the Board no less solemn an obligation than the judiciary to consider the lawfulness and constitutionality of their every action. *See Lucas v Bd of Road Comm'rs*, 131 Mich App 642, 663; 348 NW2d 642 (1984) (noting Governor's obligation); *see also Rostker v Goldberg*, 453 US 57, 64; 101 S Ct 2646; 69 L Ed 2d 478 (1981) (same for Congresspersons).

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

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

34. Importantly, as Michigan courts have repeatedly recognized, the Board is of limited jurisdiction and can only exercise those duties provided to it by the Constitution or applicable Michigan law. *See Michigan Civil Rights Initiative v Board of State Canvassers*, 268 Mich App 506, 515–20; 708 NW2d 139 (2005) (recognizing that the Board has limited authority, which is vested only "by the Legislature, in statutes, or by the Constitution"); *Citizens for Protection of*

Marriage v Board of State Canvassers, 263 Mich App 487, 493; 688 NW2d 538 (2004) ("We further conclude that the Board erred in considering the merits of the proposal. Not only did the Board have no authority to consider the lawfulness of the proposal, but it is also well established that a substantive challenge to the subject matter of a petition is not ripe for review until after the law is enacted."); *Deleeuw v State Board of Canvassers*, 263 Mich App 497, 501; 688 NW2d 847 (2004) (granting mandamus because the Board went beyond its specific statutory authority).

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

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

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

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

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

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

41. Indeed, DYV offered no statutory or constitutional authority permitting the Board to consider an "alter or abrogate" challenge. This is because there is no such authority. *Citizens Protecting Michigan's Const v Sec'y of State*, 324 Mich App 561, 585; 922 NW2d 404, *aff'd*, 503 Mich 42; 921 NW2d 247 (2018) ("because the determinations of whether a proposal is a general revision or an amendment to the Constitution and whether a proposal serves more than a single purpose require judgment, they are not ministerial tasks to be performed by the Secretary or the Board.").

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

Board shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors.") (internal quotations and citations omitted).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56. The Proposal would, among other things, amend the Constitution to add a fundamental right to vote; extend the deadline for military and overseas voters; add a voter

identification requirement; provide for single application, dropboxes, postage, and ballot tracking for absentee voting; guarantee early, in-person voting; require disclosure of charitable donations for election administration; and require election certification based on official records.

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

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

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

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

61. PTV22 relied on the Board's pre-approval of their petition form and expended an enormous amount of time, effort and resources to gather over 640,000 signatures, only to face a dilatory challenge based on an alleged defect in the pre-approved form. The time to lodge this challenge was before the Board granted its pre-approval of PTV22's form, not "after circulation is

complete." *Id*. A challenge brought to the Board during the pre-approval process would "provid[e] the judicial branch a better opportunity to provide meaningful judicial review to those allegedly aggrieved by decisions of the Bureau of Elections and the Board of State Canvassers … The current process provides very little time between decisions of the Board of State Canvassers and the date ballots must be finalized for printing." *Johnson v Bd of State Canvassers*, No. 164461, 2022 WL 1837990 (Mich, June 3, 2022) (Zahra, J concurring). Weighty ballot access issues like these deserve ample time for briefing, argument, and adjudication.

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

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

63. On August 18, 2022, DYV submitted a Challenge – dressed up as a challenge to the form of the Proposal's petition – alleging that PTV22 failed to list five provisions of the Constitution that the Proposal would allegedly abrogate. (Ex. 3, Challenge.) PTV22 submitted a robust response showing that each and every challenge was factually and legally deficient. (Ex. 4, PTV22's Response to DYV's Challenge.)

The Proposal Would Not Eliminate Election Day.

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

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

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

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

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

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

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

70. That right was incorporated into Article 2, Section 4, which addresses the place and manner of elections. In *League of Women Voters*, a voting rights organization filed a complaint for a writ of mandamus with the Court of Appeals alleging the statutory requirement that absentee

ballots had to be received by 8 p.m. on Election Day in order to be counted violated the Constitution and that any ballots mailed by Election Day should be counted.

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

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

73. Moreover, contrary to DYV's suggestion, "Election Day" is not a defined term, whether by Constitution or statute.[6] Rather, the Constitution prescribes when an "election" shall occur, which is set forth in Article 2, Section 5. "Election" is defined as "an election or primary election at which the electors of this state or of a subdivision of this state choose or nominate by ballot an individual for public office or decide a ballot question lawfully submitted to them." *See* MCL 168.2(g).

[6] 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 pointed 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.

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

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

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

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

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

79. Article 2, Section 5 will remain perfectly intact as written if the Proposal is adopted by the people this November. Election days will remain as prescribed by the Constitution. The Proposal will simply allow people to do in-person that which they can do now by absent ballot –

cast their vote prior to an election. No ordinary and reasonable voter would read the Proposal as eviscerating and nullifying Election Day in Michigan nor is that provision of the Constitution in any way "rendered wholly inoperative" by the Proposal.

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

The Proposal Would Not Abrogate the Legislature's Ability to Exclude Certain Persons from Voting under Article 2, Section 2.[7]

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

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

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

84. What is more, DYV's argument ignores that the Legislature may still pass laws governing the fundamental right to vote and elections provided that those laws do not have "the

[7] As noted above, this is only argument that DYV presented during the August 31, 2022 hearing. Secure MI Vote, another opposing committee, also focused on this argument. Presumably, DYV and Secure MI Vote now believe that this is their strongest point.

intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote." The Proposal simply does not eviscerate or render inoperative the Legislature's powers in this regard.

85. Article 2, Section 1 provides that every "citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election *except as otherwise provided in this constitution.* The legislature shall define residence for voting purposes." *See* Const 1963, art 2, § 1 (emphasis added).[8]

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

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

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

89. And in exercising the discretionary authority granted by Article 2, Section 2, the Legislature has chosen to exclude persons confined in jail or prison from voting, MCL 168.758b, or from registering to vote. MCL 168.492a. The Secretary of State explicitly recognizes these laws

[8] 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.

as rendering such individuals not qualified to vote. (*See* Ex. 6, State of Michigan Voter Registration Application). These laws would remain in effect if the Proposal is adopted by the people.

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

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

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

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

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

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

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

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

96. According to DYV, the Proposal "would block all manner of legislation, from whatever source, heretofore understood to be perfectly constitutional, including laws regarding felon voting,[9] registration, and polling hours of operation." (*See* Ex. 3, DYV's Challenge at 16.)

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

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

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

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

[9] 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.

unconstitutional now and would be struck down by a court as unconstitutional if the Proposal is adopted by the people in November.

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

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

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

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

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

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

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

107. As a threshold matter, DYV apparently does not understand that county commissions ***play no role whatsoever in the administration of elections in Michigan*** – they do not pass laws or ordinances on the administration of elections; they do not pass laws or ordinances on the qualifications of electors or voter registrations; and, they do not pass laws or ordinances on polling hours of operation or early absentee voting. Indeed, this entire argument appears to be grounded on a fundamental misunderstanding of how elections are administered in Michigan.[10]

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

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

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

111. The Bureau of Elections generally accepts and reviews petition filings; conducts statewide instructional programs on elections; assists local election officials with their

[10] 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).

administrative duties; oversees the operation of Michigan's Qualified Voter File system; publishes manuals and newsletters; and monitors legislation affecting the administration of elections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mich 15, 28–31; 597 NW2d 148 (1999) (statute containing strict requirements concerning qualifications of experts in medical malpractice cases was an enactment of substantive law that did not impermissibly infringe Supreme Court's constitutional rule-making authority over practice and procedure).

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

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

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

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

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

G. The August 31, 2020 Meeting of the Board.[11]

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

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

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

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

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

[11] Given that this action is being filed within hours of the hearing, a transcript is not yet available. However, PTV22 has ordered the transcript on an expedited basis and will supplement the record with the transcript immediately upon receipt.

COUNT I – MANDAMUS

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

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

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

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

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

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

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

COUNT II – VIOLATION OF DUE PROCESS AND EQUITABLE ESTOPPEL

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

150. The Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [US Const, Am XIV.]

151. The Due Process Clause of the Michigan Constitution says: "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166. A governmental entity can be estopped when: (1) by representation, admissions, or silence, intentionally or negligently, the governmental entity induces another party to believe facts;

(2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts . . . ." *Howard Twp Bd of Trustees v Waldo*, 168 Mich App 565, 575; 425 NW2d 180 (1988).

167. PTV22 satisfies all of these factors.

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

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

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

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

COUNT III – DECLARATORY JUDGMENT

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

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

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

MOTION FOR ORDER TO SHOW CAUSE AND
FOR IMMEDIATE CONSIDERATION

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

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

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

178. Further, any delay would deprive PTV22 of the opportunity to have its Proposal appear on the November 2022 General Election Ballot. Ballots must be finalized at least 60 days prior to the election. *See* MCL 168.32; MCL 168.474a; MCL 168.480. The printing and mailing of absentee

ballots must be accomplished by September 24, 2022.[12] County clerks must also deliver absent voter ballots for the November General Election to local clerks by September 24, 2022, *see* MCL 168.714, in time for local clerks to issue absent voter ballots to military and overseas voters in compliance with state and federal law and to issue absent voter ballots to all other registered voters by mail and in person beginning the 40th day before the November General Election. *See* Const art 2, § 4. Significant work on ballot proofing and preparation must take place before that.

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

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

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

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

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

[12] This deadline for distribution of absent voter ballots is governed by the Federal Military and Overseas Voters Empowerment Act (MOVE Act), 52 USC 20302(a)(8), Michigan Election Law, MCL 168.714 and 759a, and Michigan's constitution, art. 2 § 4.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Promote the Vote 2022 respectfully requests that this Court order the following relief:

A. Grant PTV22's Motion for an Order to Show Cause and for Immediate Consideration.

B. Issue a writ of mandamus directing Defendants to take all necessary actions to certify the Proposal for placement on the November 2022 General Election Ballot on or before September 8, 2022.

C. Remand this matter to the Board with an order to:

   a. Officially declare PTV22's Proposal sufficient; and

   b. Immediately certify the petition on or before September 8, 2022.

D. Remand this matter to the Secretary of State and Director of Elections with an order to take any and all necessary action to certify the Proposal and place it on the November 2022 General Election Ballot.

E. Enter an order finding that the Board is equitably estopped from considering the alter-or-abrogate challenge after having approved the form of the petition of the Proposal.

F. Grant all other relief that is equitable and just.

Respectfully submitted,

CLARK HILL PLC

By: */s/ Christopher M. Trebilcock*

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Attorneys for Plaintiff Promote the Vote 2022

Date: September 1, 2022

EXHIBIT 1

STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

August 25, 2022

STAFF REPORT:

PROMOTE THE VOTE 2022

SPONSOR: Promote the Vote 2022

DATE OF FILING: July 11, 2022

NUMBER OF VALID SIGNATURES REQUIRED: 425,059 signatures[1]

TOTAL FILING: 664,029 signatures[2] 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 568[4] sampled in order to trigger the following results:

Number of valid signatures	Formula result
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:

Number of valid signatures	Formula result	Sample result
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, the there is a 100% statistical probability that certification is the correct result.

EXHIBIT 2

STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

Meeting
of the
Board of State Canvassers

February 11, 2022

Called to order: 10:00 a.m.

Members present: Norman Shinkle – Chairperson
Mary Ellen Gurewitz – Vice Chairperson
Jeannette Bradshaw
Anthony Daunt

Agenda item: Consideration of the meeting minutes for approval (January 19, 2022).

Board action on agenda item: The Board approved the minutes of the January 19, 2022 meeting as submitted. Moved by Bradshaw; supported by Daunt. Ayes: Bradshaw, Daunt, Gurewitz, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the form of the initiative petition submitted by Unlock Michigan (Unlock II).

Board action on agenda item: The Board approved the form of the initiative petition submitted by Unlock Michigan (Unlock II). Moved by Gurewitz; supported by Daunt. Ayes: Bradshaw, Daunt, Gurewitz, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the form of the initiative petition submitted by Secure MI Vote.

Board action on agenda item: The Board approved the form of the initiative petition submitted by Secure MI Vote. Moved by Daunt; supported by Bradshaw. Ayes: Bradshaw, Daunt, Gurewitz, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the form of the initiative petition submitted by Raise the Wage.

Board action on agenda item: The Board moved to approve the form of the initiative petition submitted by Raise the Wage. Moved by Bradshaw; supported by Gurewitz. Ayes: Bradshaw, Gurewitz. Nays: Daunt, Shinkle. Motion failed.

Agenda item: Consideration of the form of the constitutional amendment submitted by Reproductive Freedom for All.

Board action on agenda item: The Board moved to approve the form of the constitutional amendment submitted by Reproductive Freedom for All. Moved by Gurewitz; supported by Bradshaw. Ayes: Bradshaw, Gurewitz. Nays: Daunt, Shinkle. Motion failed.

Agenda item: Consideration of the summary of purpose of the initiative petition submitted by Michiganders for Fair Lending (Michiganders for Fair Lending II). The summary of purpose as drafted by the Director of Elections is as follows:

Initiation of legislation amending the Deferred Presentment Service Transaction Act, 2005 PA 244, MCL 487.2121, 487.2122, 487.2152, 487.2153, and 487.2160, and adding MCL 487.2160a to: rename the law the "Limit Interest Rates and Fees on Payday Loans Act"; describe deferred presentment service transactions as "payday loans" and licensees as "payday lenders"; prohibit service fees on these loans that are above an annual percentage rate of 36 percent, which lowers the maximum allowable rate, and require a consumer warning of the maximum rate; deem transactions that exceed this rate void and unenforceable; and provide powers to the Attorney General to enforce and penalize attempts to evade the Act's requirements.

Board action on agenda item: The Board approved the 99 word-summary as worded above. Moved by Bradshaw; supported by Daunt. Ayes: Bradshaw, Daunt, Gurewitz, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the form of the petition submitted by Michiganders for Fair Lending II.

Board action on agenda item: The Board conditionally approved the form of the petition submitted by Michiganders for Fair Lending II with the understanding that the summary as approved by the Board will be added to the petition, and the sponsor will remove the union label. Moved by Daunt; supported by Gurewitz. Ayes: Daunt, Gurewitz, Shinkle. Nays: Bradshaw. Motion carried.

Agenda item: Consideration of the 93-word summary of purpose of the constitutional amendment submitted by MI Right to Vote (A). The summary of purpose as drafted by the Director of Elections is as follows:

Constitutional amendment to: make the deadline to submit petition signatures for a voter-initiated referendum to approve or reject a law 6 months after its enactment, instead of 90 days after legislative session; allow referendums on laws with funding appropriations; require that petition signatures for voter-initiated laws and constitutional amendments be counted, on a statewide basis, 60 days before election day, be determined valid if gathered within 2 years of filing, and be submitted 120 days before election day; eliminate legislature's power to

approve voter-initiated law; require voters or 3/4 vote of the legislature to reenact laws rejected by referendums.

Board action on agenda item: The Board approved the 93 word-summary as worded above. Moved by Daunt; supported by Gurewitz. Ayes: Bradshaw, Daunt, Gurewitz, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the form of the petition submitted by MI Right to Vote (A).

Board action on agenda item: The Board moved to approve the form of the petition submitted by MI Right to Vote (A) with the understanding that the summary as approved by the Board will be added to the petition, and the sponsor will remove the union label. Moved by Daunt; supported by Gurewitz. Ayes: Daunt, Gurewitz, Shinkle. Nays: Bradshaw. Motion carried.

Agenda item: Consideration of the 100-word summary of purpose of the constitutional amendment submitted by MI Right to Vote (B). The summary of purpose as drafted by the Director of Elections is as follows:

Constitutional amendment to: recognize fundamental right to vote; require 2 weekends of in-person absentee voting; require absentee-ballot drop boxes; provide voters right to receive absentee-ballot applications without requesting them; require absentee applications and ballots be postage prepaid; provide voter right to verify identity with photo ID or signature; allow officials to prepare for counting absentee ballots during the 7 days before election day; prohibit laws imposing undue burden on voting, laws banning donations to fund elections, laws requiring ID to vote absentee or social-security number to register, laws allowing recording of voters, and laws discriminating against election challengers; require legislature fund elections.

Board action on agenda item: The Board approved the 100 word-summary as worded above. Moved by Bradshaw; supported by Daunt. Ayes: Bradshaw, Daunt, Gurewitz, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the form of the petition submitted by MI Right to Vote (B).

Board action on agenda item: The Board moved to approve the form of the petition submitted by MI Right to Vote (B) with the understanding that the summary as approved by the Board will be added to the petition, and the sponsor will remove the union label. Moved by Daunt; supported by Gurewitz. Ayes: Daunt, Gurewitz, Shinkle. Nays: Bradshaw. Motion carried.

Agenda item: Consideration of the 100-word summary of purpose of the constitutional amendment submitted by Promote the Vote 2022. The summary of purpose as drafted by the Director of Elections is as follows:

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.

Board action on agenda item: The Board approved the 100 word-summary as worded above. Moved by Daunt; supported by Gurewitz. Ayes: Bradshaw, Daunt, Gurewitz, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the form of the petition submitted by Promote the Vote 2022.

Board action on agenda item: The Board moved to approve the form of the petition submitted by Promote the Vote 2022 with the understanding that the summary as approved by the Board will be added to the petition, and the sponsor will replace the union label with a version that complies with the appropriate font requirements. Moved by Daunt; supported by Gurewitz. Ayes: Daunt, Gurewitz, Shinkle. Nays: Bradshaw. Motion carried.

Agenda item: Consideration of the 75-word summary of purpose of the initiative petition submitted by Michigan Initiative for Community Healing. The summary of purpose as drafted by the Director of Elections is as follows:

Initiation of legislation amending the Public Health Code, 1978 PA 368, MCL 333.7403, 333.7404, 333.7451, and adding MCL 333.7462, to: reduce the maximum penalty for possessing non-prescribed drugs from felony to misdemeanor; prohibit prosecution for minuscule amounts of drugs found on paraphernalia; describe psychedelic plants and mushrooms as natural plants and mushrooms; decriminalize production and use of these plants and mushrooms; provide exemptions from penalties for sale, provision, and supervising use of these plants and mushrooms for medical and religious purposes.

Board action on agenda item: The Board approved the 75 word-summary as worded above. Moved by Gurewitz; supported by Daunt. Ayes: Bradshaw, Daunt, Gurewitz, Shinkle. Nays: None. Motion carried.

Agenda item: Consideration of the form of the petition submitted by Michigan Initiative for Community Healing.

Board action on agenda item: The Board moved to approve the form of the petition submitted by Michigan Initiative for Community Healing with the understanding that the summary as approved by the Board will be added to the petition, and the sponsor will remove the union label. Moved by Daunt; supported by Gurewitz. Ayes: Daunt, Gurewitz, Shinkle. Nays: Bradshaw. Motion carried.

Adjourned: 2:27 p.m.

Chair Shinkle

Vice-Chair Gurewitz

Member Daunt

Member Bradshaw

3/23/22
Date

EXHIBIT 3

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

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[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.

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[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]

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[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

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[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

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[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

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[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 LIMTIED 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.
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> 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 REASOANBLE ATTORNEYS' FEES, COSTS, AND DISBURSEMENTS.
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> 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.

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[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 LIMTIED 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]

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[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 LIMTIED 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 REASOANBLE 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]

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[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 1

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 the these obligations, please refer to the publication, Getting Started as a Ballot Question Committee or email Disclosure@Michigan.gov.

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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 MCL168.544c'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 REQUIREMENT[1]
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	90th 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 months[4] 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
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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.

		
Bi-fold (17 x 14 sheet)	Tri-fold or Z-fold (25.5 x 14 sheet)	Multi-fold or Accordion-fold (34 x 14 sheet)

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
For the full text of [the law to be amended], see the reverse side of this petition. *[Include the Public Act number, Michigan Compiled Laws citation and title of the law to be amended.]*
For the full text of [the new act], see the reverse side of this petition. *[Include the title of the law to be enacted.]*

CONSTITUTIONAL AMENDMENT PETITION EXAMPLES
For the full text of proposed [the constitutional provision to be created], see the reverse side of this petition. *[Include the new article and section number for the section to be created.]*
For the full text of proposed [the constitutional provision to be amended], see the reverse side of this petition. *[Include the article and section numbers of the provision to be amended.]*
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.

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

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
> township (Strike one)
> 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.

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:

SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	CITY OR TOWNSHIP	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).

- 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
Secretary of State

EXHIBIT 2

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 MO	DAY	YEAR
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

RECEIVED/FILED
MICHIGAN DEPT OF STATE
2022 APR -5 PM 3:14
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.

MIE161051

Paid for with regulated funds by Promote the Vote 2022, 600 W St Joseph Street, Suite 3G, Lansing, MI 48933

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~~ 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.

(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.

Provisions of existing constitution altered or abrogated by the proposal if adopted:

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

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.

State board of education; members, nomination, election, term.

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

Boards of institutions of higher education, limitation.

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

Article 8, § 5 University of Michigan, Michigan State University, Wayne State University; controlling boards.

Sec. 5. The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.

Article 9, § 6 Real and tangible personal property; limitation on general ad valorem taxes; adoption and alteration of separate tax limitations; exceptions to limitations; property tax on school district extending into 2 or more counties.

Section 6. Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds approved by the electors or other evidences of indebtedness approved by the electors or for the payment of assessments or contract obligations in anticipation of which bonds are issued approved by the electors, which taxes may be imposed without limitation as to rate or amount; or, subject to the provisions of Section 25 through 34 of this article, to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.

EXHIBIT 4

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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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.

[1]As 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 away, the Court is required to try to harmonize the language and "[a]n existing provision is not rendered wholly inoperative if it can be reasonably construed in a manner

[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 location 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 5

STATE OF MICHIGAN
BUREAU OF ELECTIONS
LANSING

Board of State Canvassers
August 31, 2022

Agenda

1. Public comment
2. Consideration of meeting minutes for approval (August 19, 2022)
3. Certification of the Recount for the Office of State Representative, 34th District
4. Consideration of the sufficiency of the initiative petition submitted by Promote the Vote 2022
5. Assignment of the number designation for the constitutional amendment sponsored by Promote the Vote 2022
6. Consideration of the 100-word summary of purpose for the constitutional amendment sponsored by Promote the Vote 2022
7. Consideration of the sufficiency of the initiative petition submitted by Reproductive Freedom for All
8. Assignment of the number designation for the constitutional amendment sponsored by Reproductive Freedom for All
9. Consideration of the 100-word summary of purpose for the constitutional amendment sponsored by Reproductive Freedom For All
10. Any other business properly submitted to the Board

EXHIBIT 6

State of Michigan Voter Registration Application

and Michigan Driver's License/State Identification Card Address Change Form Instructions

qualifications

To register to vote in Michigan you must be:

- A Michigan resident (at the time you register) and a resident of your city or township for at least 30 days (when you vote).
- A United States citizen.
- At least 18 years of age (when you vote).
- Not currently serving a sentence in jail or prison.

residential & mailing address

You may only register to vote in one place. If you have more than one place of residence, you may register to vote in the place where you are currently located or the place you intend to return. For example, students attending college may register in their hometown or at their campus address, and temporary in-patient residents of nursing homes may register at their home address or at the medical facility.

If you would prefer to receive mail related to your voter registration or driver's license/state identification card at an address other than your residential address (ex. PO Box), you may provide a mailing address where indicated on the form. If you provide a mailing address, it won't appear on your voter information card or driver's license/state identification card.

criminal convictions and registering to vote

If you have a past criminal conviction and are no longer in jail or prison, you **can** register and vote. You also can register and vote if you are in jail and awaiting trial or sentencing. If you are currently serving a sentence in jail or prison you **can't** register or vote.

deliver to your city or township clerk

Mail or deliver this completed application directly to your city or township clerk. Find your city or township clerk's address at Michigan.gov/Vote.

registering by mail – special requirements for first-time voters

Are you registering to vote in Michigan for the first time?

If you have never voted in Michigan and choose to submit this form by mail or through a voter registration drive, you must meet the federal identification requirement as explained below.

federal requirement – provide identification

To comply with the identification requirement, you must:

(1) Enter your Michigan-issued driver's license number or Michigan-issued state ID card number where requested on this form.

or

(2) If you do not have a Michigan-issued driver's license or Michigan-issued state ID card, provide the last four digits of your Social Security number.

or

(3) Send one of the following forms of identification when mailing this form to your county, city or township clerk: a COPY of a current and valid photo identification (such as a driver's license or state ID card from any state) or a COPY of a paycheck stub, utility bill, bank statement or a government document that lists your name and address.

*****DO NOT SEND ORIGINAL ID DOCUMENTS BY MAIL*****

If this requirement applies to you and you don't provide the information identified above, you must provide an acceptable form of identification before you vote in the first election in which you wish to participate.

Note: The identification requirement **doesn't** apply if you: (1) personally hand-deliver this form to your county, city or township clerk's office instead of mailing this form or submitting it through a voter registration drive, (2) are disabled or (3) are eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act.

questions?

Contact your city or township clerk if you have any questions.

Your application isn't valid until accepted by your city or township clerk. If your application is accepted, your clerk will mail you a voter information card within 3 weeks. You can verify your voter registration status by going to Michigan.gov/Vote.

ED-121 (1-2020)

Track your registration status, find your city/township clerk, view your polling location, and more at Michigan.gov/Vote.

instructions

If you have a Michigan driver's license or state ID card, **you can register to vote online**. Start the process at Michigan.gov/Vote.

Complete this form to register to vote or update your registration information[1].

1. Please print all information clearly using black or blue pen.
2. Sign the form.
3. Mail or drop off the form to your city/township clerk.

Find your city/township clerk and more information at Michigan.gov/Vote.

Phone number/email provided will be used for official election purposes only.

[1]Name changes must be completed at an SOS branch office.

The voter registration deadline is **15 days** before Election Day, **IF** you submit this form through a voter registration drive or deliver it to a county clerk or secretary of state office. If you mail the form, it must be postmarked at least 15 days before the election.

You can register any time up through Election Day by going to your city or township clerk office with residency verification.

If you have a Michigan driver's license (DL) or state identification card (ID), you must use the same address for voter registration and DL/ID.

This form will also change your DL/ID address. You'll be mailed a sticker with your new address to put on your DL/ID.

If you have never voted in person in Michigan and choose to submit this form by mail or through a voter registration drive, **review the instructions on page 1**. You might need to provide additional ID.

More instructions can be found on page 1.

State of Michigan Voter Registration Application

and Michigan Driver's License/State Identification Card Address Change Form

qualifications

○ yes ○ no I am a United States citizen.

○ yes ○ no I am at least 17.5 years old and will vote only after I turn 18.

If you are not a U.S. citizen, DON'T complete this form.

Michigan-issued driver's license/Michigan-issued state ID card number

☐☐☐-☐☐☐-☐☐☐-☐☐☐-☐☐☐

If you don't have a *Michigan*-issued driver's license or *Michigan*-issued state ID card, provide the last four digits of your Social Security number:

XXX — XX — ☐☐☐☐

☐ I don't have a valid Michigan-issued driver's license or Michigan-issued state ID card, or a Social Security number.

personal information **required information*

last name* | first* | middle | suffix

☐☐-☐☐-☐☐☐☐ date of birth* ☐ male ☐ female

address where you live – house number & street name* | apt/lot no.

city* | MI | zip

( ) phone | email

mailing address (if different than where you live) | city | state | zip

Complete to join permanent absent voter application list: ☐ I want to vote absentee in all future elections. Automatically send me an application for every election.

signature

I certify that:

- I am a United States citizen.
- I am a Michigan resident and will vote only after I have lived in my city or township for at least 30 days.
- I am at least 17.5 years old and will vote only after I turn 18.
- I authorize the cancellation of any previous registration.

The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be subject to a fine or imprisonment or both under federal or state laws.

X

signature | date

EXHIBIT 7

STATE OF MICHIGAN
IN THE SUPREME COURT

UNLOCK MICHIGAN, GEORGE FISHER, and NANCY HYDE-DAVIS

Plaintiffs,

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 the Bureau of Elections,

Defendants,

KEEP MICHIGAN SAFE,

Intervening Defendant.

Supreme Court No. 162949

ORAL ARGUMENT REQUESTED

INTERVENING DEFENDANT KEEP MICHIGAN SAFE'S BRIEF IN OPPOSITION TO PLAINTIFFS' COMPLAINT FOR IMMEDIATE MANDAMUS RELIEF

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INTRODUCTION

Plaintiffs seek to have this Court do for them what is has no obligation to do and what it has no jurisdiction to do. Plaintiffs want this Court to direct the Board of State Canvassers to certify Unlock Michigan's petition to repeal a statute that has already been declared unconstitutional by this Court and is thus of no legal or practical effect. Because the statute has been declared unconstitutional, it is as though it never existed. Unlock Michigan's ballot initiative is therefore moot and neither this Court nor the Board can award Plaintiffs any further relief. Accordingly, the Court lacks jurisdiction to hear this case and should dismiss it on that basis.

Even assuming this Court has jurisdiction, Plaintiffs ask this Court to ignore the statutory authority the Board possesses to protect the integrity of the ballot initiative process. Here, Plaintiffs claim that the Board has no authority to investigate whether Unlock Michigan's signatures were gathered illegally – that is whether circulators left petitions unattended (they did), whether individuals signed for family members and friends (they did), or whether Unlock Michigan's vendors trained circulators to violate the Michigan Election Law (again, they did). The problem for Plaintiffs is that the Michigan Election Law expressly provides the Board with the statutory authority to conduct such an investigation and the Court of Appeals has confirmed this authority, contrary to Plaintiffs' misunderstanding of the case law upon which they rely. For this additional reason, this Court should dismiss Plaintiffs' Complaint.

Beyond these failings, this Court cannot grant any relief in this case until the Secretary of State complies with the Administrative Procedures Act by promulgating rules for the verification of ballot question signatures as the Michigan Election Law requires. For twenty years, the office of the Secretary of State has ignored that MCL 168.31(2) required rules governing the review of ballot initiatives, including signature verification. Absent this mandatory rulemaking, any writ of

mandamus issued by this Court directing the Board to take any ministerial action is fatally flawed because the mandatory rules governing these duties are absent. In addition, given that the Board's canvassing manuals – which have only been promulgated informally – implement substantive Michigan Election Law standards and are of general applicability, they should have been promulgated as rules under the APA and were not. As such, the Board cannot proceed with reviewing Unlock Michigan's petition until such rulemaking is completed.

Plaintiffs' Complaint also ignores that the Board violated Keep Michigan Safe's procedural due process rights. Michigan law requires that all interested parties be provided sufficient notice prior to a contested hearing of the evidence or information that will be considered. However, when the Board met and considered challenges to Unlock Michigan's petition summary (which was the only item related to Unlock Michigan on the meeting notice), the Board failed to provide notice that it was also going to review the *form* of Unlock Michigan's petition or that Unlock Michigan had submitted an amended form *after* the Board released its meeting notice. The first time anyone other than the Board or Unlock Michigan saw the form of the petition was when Unlock Michigan began circulating its petition. This type of procedural unfairness cuts against every due process requirement embedded in our system of government.

Finally, even if these jurisdictional and procedural issues were not enough to dismiss Plaintiffs' Complaint, there are substantive issues with Unlock Michigan's petition, including the form of the petition. This Court has previously held that strict compliance is required with all aspects of the Michigan Election Law, including format and typeface requirements. Unlock Michigan's petition fails to strictly comply with the Michigan Election Law in a host of ways. For example, the petition summary on Unlock Michigan's petitions uses a nonexistent public act name. And the full text of the proposal does not follow the proposal summary on Unlock Michigan's

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petitions. Where Unlock Michigan was required to use 8-point type, it did not. And the petition circulator statement does not appear on top of the petitions. Many more deficiencies are outlined below. Because of these deficiencies, none of Unlock Michigan's petition signatures are valid and they cannot be counted.

For any of these reasons, the Court should dismiss Plaintiffs' Complaint and uphold the Board's decision to not certify Unlock Michigan's petition.

BACKGROUND

Unlock Michigan used the petition summary process outlined in MCL 168.482b by request dated June 12, 2020. *See* Department of State, Bureau of Elections, "Deadline Established for Public Comments Regarding Petition Summary, Statewide Ballot Proposal Sponsored by Unlock Michigan" (June 16, 2020) (Appx. 001). On July 2, 2020, the Board provided notice of a meeting to consider this 48-word summary prepared by Director Brater:

> An initiation of legislation to repeal the Emergency Powers of Governor Act, 1945 PA 302, MCL 10.31 to 10.33, entitled "An act authorizing the governor to proclaim a state of emergency, and to prescribe the powers and duties of the governor with respect thereto; and to prescribe penalties." [*See* Michigan Department of State, Bureau of Elections, "Notice of July 6, 2020 Board of State Canvassers Meeting" at 2 (Appx. 002–003).]

The July 2 notice did not mention that the Board was going to take any other or further action with respect to Unlock Michigan's petition. However, at its July 6 meeting, the Board not only approved the above summary, but also the form of Unlock Michigan's petition, despite the fact that the form of Unlock Michigan's petition was not on the agenda and that Unlock Michigan submitted an amended petition form at the end of the day on July 2 after the Board released its notice. *See* July 6, 2020 Meeting Minutes (Appx. 004–005). Unlock Michigan then began circulating that amended petition.

On or about October 2, 2020, Unlock Michigan submitted signatures to the Secretary of State in support of its ballot initiative. Compl. ¶ 41 and its Exhibit 1. Due to administering the November 2020 General Election, which included a presidential race, review of Unlock Michigan's petition was delayed. The Bureau of Elections released its initial sample in March 2021, and on April 19, 2021, the Bureau of Elections released its staff report. *Id.* at ¶¶ 41–50 and its Exhibit 1.

Keep Michigan Safe submitted a challenge on April 9, 2021 outlining many of the defects in Unlock Michigan's petition. *See* Keep Michigan Safe Challenge with Exhibits (Appx. 006–115). On April 22, 2021, the Board met to consider the sufficiency of Unlock Michigan's petition. The Board deadlocked 2–2 on whether to certify Unlock Michigan's petition, on whether to promulgate rules under the APA, and whether to investigate Keep Michigan Safe's signature gathering tactics to determine whether Unlock Michigan submitted sufficient, legally gathered signatures in support of its proposal. On April 30, 2021, Plaintiffs filed this lawsuit.

ARGUMENT

I. The Court Lacks Jurisdiction Over Plaintiffs' Complaint.

As a threshold matter, this Court lacks jurisdiction to hear Plaintiffs' Complaint because of mootness. This Court recently reiterated its well-established standard for mootness, which renders the Unlock Michigan petition moot and thus depriving this Court of jurisdiction:

> It is universally understood by the bench and bar . . . that a moot case is one which seeks to get . . . a judgment upon some matter which, when rendered, *for any reason cannot have any practical legal effect upon a then existing controversy.* [*League of Women Voters of Michigan v Secretary of State*, 506 Mich 561, 580; 957 NW2d 731 (2020) (emphasis added) (quoting *Anway v Grand Rapids R Co*, 211 Mich 592, 610; 179 NW 350 (1920).]

This case is moot because Unlock Michigan cannot repeal – nor can the Board approve a petition seeking to repeal – a statute that has already been declared unconstitutional and is no longer in effect. The Board thus did not have a clear legal duty to certify Unlock Michigan's petition. It is axiomatic that the Board cannot have a ministerial duty to certify a petition to repeal a law that has been held to be unconstitutional and thus is of no effect.

On October 2, 2020, this Court issued an opinion in *In re Certified Questions From United States District Court*, --- NW2d ---; 506 Mich 332, 2020 WL 5877599 (2020). There, the Supreme Court held that MCL 10.31, *et seq.* – the statute Unlock Michigan seeks to repeal – was an unconstitutional delegation of power to the executive branch. *Id.* at 372 ("We accordingly conclude that . . . MCL 10.31(1), constitutes an unlawful delegation of legislative power to the executive and is therefore unconstitutional[.]"). This Court went on to conduct a severability analysis and ultimately determined the delegation was not severable from the rest of the statute and declared the entire statute unconstitutional. *Id.* at 374.

Under long-standing principles of constitutional law and statutory interpretation, when a court declares a statute unconstitutional, that "unconstitutional statute is void ab initio." *Stanton v Lloyd Hammond Produce Farms*, 400 Mich 135, 144–45; 235 NW2d 114 (1977). This means that "an unconstitutional statute, though having the form and name of law, is in reality no law, **but is wholly void, and ineffective for any purpose**; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it, **an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed**." *Id.* (quoting 16 Am Jur 2d, Constitutional Law, § 177, pp. 402–03 and noting that "this rule has been consistently followed in Michigan" and citing authorities) (emphases added); *see also Norton v Shelby Cty*, 118 US 425, 443, 6 S Ct 1121, 1125, 30 L Ed 178 (1886) ("An

unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."). MCL 10.31, *et seq.* is thus "void . . . for any purpose" including an attempted repeal by initiative petition.

By declaring the law unconstitutional in October 2020, this Court already did what Unlock Michigan seeks to accomplish through its initiative petition – preventing governors from exercising powers under MCL 10.31, *et seq*. Unlock Michigan's ballot initiative – and the relief it seeks through this lawsuit – are moot. Unlock Michigan already has all the relief it seeks and neither the Board nor this Court can grant them any better or further relief. *Detroit Edison Co v Pub Serv Comm*, 264 Mich App 462, 474; 691 NW2d 61 (2004) ("Because [Plaintiff] has already effectively obtained the relief it seeks with regard to this issue and this Court cannot provide further meaningful relief regarding the matter, the issue is moot."). Unlock Michigan's efforts are wholly unnecessary as the statute can never be used again given this Court's opinion in *In re Certified Questions*. *See, e.g.*, Oliver P. Field, The Effect of an Unconstitutional Statute 1, 4 (1935) ("[U]nder the void ab initio view . . . the rule is properly applied that a statute, once declared unconstitutional, need not be pleaded and assailed in subsequent cases."); *see also Kentucky Right to Life, Inc v Terry*, 108 F3d 637, 644 (CA 6, 1997) (where statute no longer in effect, it is moot); *Libertarian Party of Ohio v Husted*, 497 F App'x 581, 583 (CA 6, 2012) (case rendered moot when statute was no longer in effect).

For these reasons, the Court should find that Unlock Michigan's petition drive is moot and dismiss this action due to lack of jurisdiction.

II. Unlock Michigan's Illegal Signature Gathering Casts Doubt on Whether Unlock Michigan Submitted Sufficient Signatures to Warrant Certification.

Even if this Court determines that it has jurisdiction to hear Plaintiffs' Complaint, Plaintiffs are not entitled to any of the relief they seek because the Board did not breach any clear ministerial duty allegedly owed to Unlock Michigan. Plaintiffs' failure in this respect also dooms their Complaint.

A. The Board Does Not Have a Clear Duty to Certify Unlock Michigan's Petition, Nor Did it Breach any Duty, Because the Board Has Not Determined that Unlock Michigan Submitted Sufficient Signatures Required for Certification Given Well-Documented Illegal Signature Gathering Committed.

Plaintiffs' Complaint contains a single mandamus count. Compl. ¶¶ 96–143. "The plaintiff bears the burden of demonstrating entitlement to the extraordinary remedy of a writ of mandamus." *Citizens for Protection of Marriage v Board of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004). A court will only issue a writ of mandamus if the party seeking the writ meets all of the following four requirements:

> (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedy. [*Id.*]

"A clear legal duty, like a clear legal right, is one that 'is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.'" *Hayes v Parole Bd*, 312 Mich App 774, 782; 886 NW2d 725 (2015) (cleaned up). "A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Berry v Garrett*, 316 Mich App 37, 42; 890 NW2d 882 (2016) (cleaned up).

With respect to ballot question petitions, the Board has a ministerial duty to certify the petition *only if* the petition strictly complies with form requirements and has sufficient signatures based on uncontroverted facts to warrant certification. *See Mich Civil Rights Initiative v Board of State Canvassers*, 268 Mich App 506, 517; 708 NW2d 139 (2005) (collecting authorities; decided before *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 603–04; 822 NW2d 159 (2012), which required "strict" compliance with election law requirements and repudiated the concept of substantial compliance); *Hayes*, 312 Mich App at 782.

The first perquisite for mandamus relief – uncontroverted facts – is absent here. Unlock Michigan claims that the Board does not dispute that Unlock Michigan has submitted enough valid signatures. *See* Compl. at p. 2. Not so. Members Matuzak and Bradshaw repeatedly questioned the genuineness and sufficiency of the signatures Unlock Michigan gathered and submitted, which if found to have been illegally gathered, would result in disqualification of petition sheets and Unlock Michigan potentially having *not enough* signatures:

> But we are really looking -- our job is to look at these signatures in light of any, frankly, illegal gathering of signatures. It's different when someone says, "Petition A does this" when it really doesn't. It's an entirely different thing to violate the warnings and rules on the petition itself. Questions about observing the signatures, questions about signing, who can sign, who doesn't sign. And the Attorney General did, in fact, investigate. **Her report indicates that there were a number of folks engaged in if not outright illegal, certainly questionable activities** . . . . **And so I'm concerned about the validity of some of these signatures**, not the questions about are they registered, not does their signature match, **but rather how these signatures were gathered**. And I think it behooves us to actually exercise our power to look at that. We are the gatekeepers of election integrity and election integrity includes petitions. **And I think we let down voters if we don't exercise the power we have to make sure signatures were collected legally**. [Hrg. Tr. 45:23–46:8, 46:21:47:5 (emphases added) (Appx. 161–163).]

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* * *

> So I would rather us get this right and if that means establishing new procedures about how we look at things -- and the other thing is John Pirich gave us a letter back in the fall about this very petition drive and how these signatures were gathered. We didn't do anything formally with it. We accepted it. And he's been -- he was doing this work longer than I've been doing this work **and he commented in that letter that he had never seen anything quite as egregious as this in terms of how these signatures were gathered**. So I do think it is worth pursuing an investigation. That's my final comment. Sorry. [Hrg. Tr. 50:23–51:8 (emphasis added) (Appx. 166–167).]

Clearly, Members Matuzak and Bradshaw – half the Board – did not believe that there were sufficient, legally gathered signatures to certify Unlock Michigan's petition absent an investigation into whether the submitted signatures were legally gathered. Nor can Unlock Michigan rely on the Bureau of Elections staff report recommending certification because the staff report did not look at *any* of the issues raised by Keep Michigan Safe with respect to illegally gathered signatures. *See* Keep Michigan Safe's Challenge (Appx. 006–115); Staff Report (Appx. 198–200).[1] The facts here about whether there are sufficient signatures are in dispute and therefore mandamus is unavailable.

Keep Michigan Safe's request for an investigation – which is what Member Matuzak based her motion for an investigation on, a motion seconded and voted for by Member Bradshaw – was based on Unlock Michigan's illegal signature gathering tactics as shown in Keep Michigan Safe's challenge. *See* Keep Michigan Safe's Challenge (Appx. 006–115).

[1] As discussed below, the statutory authority for the Board to rely on the staff report to conclude that there are sufficient signatures is non-existent. The process of sampling used by the staff to complete its report is not authorized by statute or by rule. Rather, the process is a creation of the Bureau of Elections and imposed by informal guidance as opposed to the required rulemaking process under the APA.

Those tactics would nullify many signatures submitted by Unlock Michigan. For example, the evidence thus far indicates that Unlock Michigan and the firms it hired to circulate petitions:

- educated or trained circulators as to how to abuse, evade, or violate clear statutory requirements contained in 1954 PA 116, the Michigan Election Law, MCL 168.1 et seq.;

- informed or instructed circulators that "... its really hard to get caught doing s---- except for, like forgeries."

- informed or instructed circulators how to engage in illegal activities such as leaving petitions unattended and signed by circulators at a later date. [*See* Keep Michigan Safe Challenge (Appx. 012).]

Unlock Michigan hired and paid the petition firms that violated the law and those firms in turn hired the circulators that violated the law. Volunteer circulators violated the law as well. *Id.* For example, Mark Jacoby, the owner of one of those firms, Let the Voters Decide, has a criminal record for falsifying voter registrations, fraudulent signature-gathering, and other unsavory tactics elsewhere in the United States, including Arizona and California. *See* P. Egan, In secret recording, trainer for Unlock Michigan advises on unlawful tactics, Detroit Free Press (Sep 22, 2020); P. Egan, Unlock Michigan petition circulator has criminal record, history of 'bait and switch', Detroit Free Press (Aug 28, 2020); S. Fenske, Mark Jacoby, Accused of Voter Fraud in AZ, Is Arrested, Phoenix Sun Times (Oct 27, 2008); Staff, State rep 'appalled' at convicted petition circulator potentially gathering signatures in Arkansas, Legal Newsline (July 10, 2020). He brought in many out of state circulators. *See* Keep Michigan Safe Challenge (Appx. 068–070) (photos of unattended petitions) and (Appx. 013–014) (out of state circulators).

For example, out of state circulator Christian Epting from Arkansas, a Jacoby recruit, had four signatures on three sheets – 11176, 11177, and 42159 – in the sample. All four of those signers were not registered to vote. A review of all the signers on those sheets revealed that 16 of

25, nearly two-thirds, were not registered. Plainly, Epting was not checking voter registration status as the circulator certificate requires. Mychael Bluntson, from California, had four signatures on four sheets from the sample – 193684, 59912, 66966, and 38945. None of those signers were registered to vote and 60% of the signers of his petitions in the sample were not registered to vote. As with Epting, Bluntson was clearly not checking voter registration status as the circulator certificate requires.

In general the out of state circulators had far more errors than Michigan circulators. While out of state circulators circulated 29% of the sheets in the sample, 52% of the defective signatures were on those sheets. There is also evidence from throughout the state that Unlock Michigan petition circulators illegally allowed signers to sign the names of others on the petition. *See* Keep Michigan Safe Challenge, Transcripts (Appx. 090–092); *see also* P. Eagan, New video shows Unlock Michigan circulator telling woman she can sign husband's name, Detroit Free Press (Sep 30, 2020).

Erik Tisinger of In The Field, another paid circulator hired by Unlock Michigan, *trained circulators* to leave petitions unattended:

> **Tracker** I have a friend who has a store. Could I like, if I talk to him and I'm like, "hey, man, can I just keep this? Can you have this petition on your counter? So when customers come in, they can sign it?"
>
> **Erik (petition manager)** Technically, no. It. None of you are recording anything right now are you?
>
> **Petition gatherer trainee** No.
>
> **Erik (petition manager)** Yes.
>
> **Erik (petition manager)** Don't ever tell me about it again.
>
> **Tracker** Ok

> **Erik (petition manager)** I'm, and I never heard this conversation. You guys never heard this conversation. Umm, You can. The thing is, is that we'll get. People. This is real. This can be a real shady job. And when I say shady, I mean, people do all sorts of illegal shit all the time and never get caught. It's really hard to get caught doing shit except for, like, forgeries. I'm not going to tell you the things that people do because I don't want you guys to do that shit, but you can do that. The thing, is, is that legally speaking, you're supposed to witness everybody who gets, who signs. [*See* Keep Michigan Safe Challenge (Appx. 014).]

Keep Michigan Safe also documented numerous instances of Michigan residents illegally gathering signatures. For example circulator Julie Compagner of Petition 0023702 in the sample obviously signed the names of at least three other family members to that petition as the handwriting and printing clearly reveal on lines 1, 2, 3, and 7:

	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE
1.	Julie Beth Compagner	Julie Beth Compagner	3874 30th St.
2.	Marissa Dawn Compagner	Marissa Dawn Compagner	3874. 30th St.
3.	Megan Lynelle Compagner	Megan Lynelle Compagner	3874 30th St
4.	[redacted]	[redacted]	[redacted]
5.	Cris Allen Compagner	Cris Allen Compagner	3874 30th St
6.	Lacey Scott Compagner	Lacey Scott Compagner	3632, 144th Ave
7.	Melanie Ann Compagner	Melanie Ann Compagner	3874 30th St
8.	Joshua Mark Groenheide	Joshua Mark Groenheide	3918 142nd Ave

See Keep Michigan Safe Challenge (Appx. 015). Attorney General Nessel conducted a criminal investigation of the allegations against Jacoby, Tisinger, and others, and contrary to Unlock Michigan's assertions, she did not absolve them of illegal activity. Far from it, Attorney General Nessel documented ***numerous instances of illegal signature gathering*** by Unlock Michigan, but chose not to prosecute because of concerns over whether she could obtain convictions given her burden of proof:

> Notwithstanding his denials, the evidence establishes that this paid petition circulator left petitions for voters to sign unattended at a store and signed petitions making certifications as a circulator before the voters signed the petition. [Unlock Michigan Investigative Report, p. 18 (Appx. 218).]

* * *

> The owner of Howell Western Wear probably aided and abetted the improper circulation of petitions by allowing Scott to leave the petitions at her store for people to sign. [*Id.*]

* * *

> The video taken at the Brighton Farmers Market clearly shows that Ms. Reyes told a person that it was all right to sign her husband's name. While not correct, such advice is not per se a violation of law. But the total facts and circumstances indicate that Reyes intended to have the person sign so that she could collect payment for an additional signature. [*Id.*]

* * *

> It would actually be charitable to say Mr. Tisinger exemplifies the worst of the worst in the occupation of professional petition circulators. The evidence indicates that he is fully aware of the requirements of law and takes relish in finding ways around rules that would come between him and the money that can be made from circulating petitions. [*Id.* at 19–20; (Appx. 219–220.)]

* * *

> **The investigation did, however, find incidents where the conduct went beyond being simply misconduct and questionable practices, and were actually violative of criminal statutes.** However, in each of those identified instances there was simply insufficient admissible evidence to support criminal charges. [*Id.* at 21; (Appx. 221) (underlined emphasis in original; bold emphasis added).]

There are many more examples than those detailed above. Moreover, as set forth in Keep Michigan Safe's Answer, it has been discovered that Unlock Michigan was untruthful to the Attorney General when it told her that all signatures from circulators named in her report had not been filed. *See* Keep Michigan Safe's Answer, ¶ 58.

Given the doubts Members Matuzak and Bradshaw raised about Unlock Michigan's signature gathering tactics in light of Keep Michigan Safe's challenge, the Attorney General's

report, and the significant media attention surrounding Unlock Michigan's illegal signature gathering tactics, the Board *did not* conclude that Unlock Michigan had submitted sufficient signatures to warrant certification. Accordingly, there was no duty to certify Unlock Michigan's petition and no duty was breached because the fact of whether there are enough signatures is in dispute. Mandamus relief is not available to Plaintiffs.

B. The Board Has the Statutory Authority to Conduct an Investigation.

Unlock Michigan claims that it is being treated differently than any other petition before the Board and that the Board does not have the authority to conduct an investigation of Unlock Michigan's signature gathering tactics. Again, Unlock Michigan is simply wrong – the Board has the clear legal authority to conduct its own investigation and disqualify illegally collected signatures:

> **(2) The board of state canvassers may hold hearings upon any complaints filed or for any purpose considered necessary by the board to conduct investigations of the petitions.** To conduct a hearing, the board may issue subpoenas and administer oaths. The board may also adjourn from time to time awaiting receipt of returns from investigations that are being made or for other necessary purposes. [MCL 168.476(2) (emphasis added).]

In addition, if an individual refuses to comply with the Board's subpoena, the Board can "hold the canvass of the petition in abeyance until the individual complies." MCL 168.544c(14). After the investigation, the Board *must* disqualify signatures on petitions which circulators left unattended or in any way failed to witness the signing of the petition. *See* MCL 168.482a(5) ("Any signature obtained on a petition that was not signed in the circulator's presence is invalid and must not be counted."); *see also* 168.544c(11)(a).[2] The entire scope of Keep Michigan Safe's request for an

[2] The Board's broad authority to investigate ballot proposal petitions and signatures is very different from its narrow, ministerial duty to certify election results. *See, e.g., McLeod v State Board of Canvassers*, 304 Mich 120, 137; 7 NW2d 240 (1942).

investigation was limited to whether Unlock Michigan submitted enough, legally gathered signatures, which is well within the scope of the Board's statutorily delineated authority. *See* Keep Michigan Safe's Challenge (Appx. 006–115). Keep Michigan Safe reiterated this at the April 22, 2021 hearing:

> **We're not asking the Board to investigate fraud. We're only asking the Board to investigate illegal signature collection, unattended petitions, people signing a circulator so we're not (inaudible) which the Board has the power to do under the statutes we have cited in our challenge** . . . . We're asking for an investigation of the signature . . . . **Page 9 of their response they quote the Auto Club case which says, "The Board of State Canvassers possesses the authority to consider whether there are sufficient, valid signatures." That is exactly what we are asking for. On page 10 of their response they acknowledge that, "This means the Board can examine 'the validity of signatures.'"** That is exactly what we are asking for here. [Hrg. Tr. 20:7–17, 20:22–21:13 (emphases added) (Appx. 136–137).]
>
> * * *
>
> But the statute is very clear that you have the authority to investigate the validity of signatures that were collected, **specifically things like were they collected in the presence of a circulator or was a petition left unattended as we have alleged in our challenge and as the Attorney General found yesterday**, that there were several examples of that, that she found in just the limited investigation that she did. **You can also investigate, for example, whether that is a valid signature of that person. Did somebody else sign for them or not? If somebody signed for somebody else, that's an invalid signature. It has nothing to do with the verbal exchange between a circulator and a potential signer.** [Hrg. Tr. 25:17–26:10 (emphases added) (Appx. 142–143).]

Unlock Michigan's argument that the Board lacks the authority to investigate its signature gathering tactics principally relies on *Mich Civil Rights Initiative v Board of State Canvassers*, 268 Mich App 506; 706 NW2d 139 (2005). *See* Hrg. Tr. 33:3–15 (Appx. 149). But Unlock Michigan completely misreads *MCRI*. In *MCRI*, the request for an investigation was based on a belief and reports that petition circulators were making false and misleading statements about the

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petition at issue to electors and potential signers. *MCRI*, 268 Mich App at 513. The Board requested clarification from the Court on whether they could investigate "the claims of fraudulent misrepresentations presented by the challengers." *Id.* The Court of Appeals *only* held that the Board lacked the authority to investigate statements made by circulators to signers:

> Because the Legislature failed to provide the board with authority to investigate and determine whether **fraudulent representations were made by the circulators of an initiative petition**, we hold that the board has no statutory authority to conduct such an investigation. [*Id.* at 519–20 (emphasis added).]

That is all the Court of Appeals held, and in fact the Court of Appeals specifically recognized that the Board has the authority to conduct an investigation into "the validity of the signatures," *id. at* 519–20, which is what the Board Members sought with respect to Unlock Michigan's petition.

At bottom, the Board has the authority to conduct an investigation of Unlock Michigan's signatures within the parameters Keep Michigan Safe requested. Unlock Michigan's cases say so. Given the questions raised about the genuineness of the signatures Unlock Michigan submitted, the Board was clearly not satisfied that Unlock Michigan submitted sufficient signatures in support of their petition, and so there was no duty to certify. The Board correctly chose not to certify Unlock Michigan's petition and mandamus is neither warranted nor appropriate.

III. The Board, Secretary Benson, and the Director of Elections Have All Failed to Comply with the APA, Which Nullifies Any Actions Taken With Respect to Unlock Michigan.

A. The Secretary of State Failed to Promulgate Rules as Required by Law.

Under the Michigan Election Law, the Secretary of State shall "issue instructions and **promulgate rules pursuant to the administrative procedures act of 1969**, for the conduct of elections and registrations in accordance with the laws of this state." MCL 168.31(1)(a) (emphasis added). Since the enactment of PA 220 in 1999, effective March 10, 2000, the Michigan Election

Law has required the Secretary of State to promulgate rules pursuant to Michigan's APA setting uniform standards for the verification of ballot question petition signatures:

> (2) Pursuant to the administrative procedures act of 1969, 1969 PA 306 MCL 24.201 to 24.328, the secretary of state **shall promulgate rules establishing uniform standards** for state and local nominating, recall, and **ballot question petition signatures**. The standards for **petition signatures may include**, but need not be limited to, standards for all of the following:
>
> (a) Determining the validity of registration of a circulator or individual signing a petition.
> (b) Determining the **genuineness of the signature of a circulator or individual signing a petition**, including digitized signatures.
> (c) Proper designation of the place of registration of a circulator or individual signing a petition. [MCL 168.31(2) (emphases added).]

As the House Legislative Analysis noted, the amendments to the Michigan Election Law – in particular HB 5064 – had the "stated intention of improving the efficiency and safeguarding the integrity of the state's election system. A number of [amendments] address recent problems with the circulating and approving of petitions, both candidate petitions and petitions for ballot questions. For example, new standards have been proposed for determining the validity of petition signatures and to provide stiffer penalties for petition of fraud."). *See* House Legislative Analysis Section, Election Law Changes (Appx. 277–283).

However, despite this clear statutory requirement, every single individual who has held the position of the Michigan Secretary of State has failed to promulgate rules pursuant to the APA setting uniform standards for the verification of ballot question petition signatures as MCL 168.31(2) requires. The Michigan Administrative Code is entirely devoid of any such rules.

The only materials promulgated by the Secretary of State – including Secretary Benson – on the topic of "standards" for the verification of ballot question petition signatures by the Board are two unofficial memos, one of which is a 25-page self-described "publication" geared towards

members of the public seeking "guidance . . . in launching a petition drive to initiate new legislation." *See* Sponsoring a Statewide Initiative, Referendum or Constitutional Amendment Petition, pp. 1, 10-11 (June 11, 2019) (Appx. 284–308)[3]; Circulating and Canvassing Countywide Petition Forms (April 2020) (Appx. 309–323). In relevant part, the 2021 manual reads as follows:

> 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 a sufficient number of valid signatures to warrant certification. The random sampling process yields two important bits of data: A projection of the number of valid signatures in the entire filing, and the probability that the sample result accurately determined whether or not 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

[3] The Secretary of State issued an updated publication on March 1, 2021. *See* Sponsoring a Statewide Initiative, Referendum or Constitutional Amendment Petition (Mar 1, 2021) (Appx. 324–348). This updated publication did not substantively alter the relevant signature review procedures.

> 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 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. [*See* Sponsoring a Statewide Initiative, Referendum or Constitutional Amendment Petition (Mar 1, 2021), pp. 10–11 (Appx. 324–348).]

The *Canvassing Manual* has several pages of standards for evaluating the validity of petition sheets and signatures.

The Michigan Administrative Procedures Act of 1969 governs the "effect, processing, promulgation, publication, and inspection of state agency rules, determinations, and other matters," among other provisions. *See* MCL 24.201. The rulemaking process under the APA exists to ensure "public participation in the rule-making process, prevent precipitous action by the agency, prevent the adoption of rules that are illegal or that may be beyond the legislative intent, notify affected and interested persons of the existence of the rules and make the rules readily accessible after adoption." *See Michigan Charitable Gaming Ass'n v Michigan*, 310 Mich App 584, 604; 873 NW2d 827 (2015) (cleaned up).

Because the Board's petition and signature review practices were not promulgated under the APA, they cannot be used to review the Unlock Michigan petition. The language in MCL 168.31(2) is clear and mandatory: "Pursuant to the [APA], the secretary of state **shall promulgate rules establishing uniform standards** for state and local nominating, recall, and **ballot question petition signatures**." MCL 168.31(2) (emphases added); *see also Stand up for Democracy*, 492 Mich at 601 ("The legislature's use of the term shall indicates a mandatory and imperative directive.") (cleaned up).

There is no dispute that the Secretary of State has failed to comply with the mandatory language of MCL 168.31(2). Neither the Secretary of State nor the Board has ever properly adopted the Board's practices for reviewing ballot questions petitions and their signatures under the APA, from the initial "face check" to sampling to signature matching. The Board is essentially operating on its own, with no properly promulgated rules or standards of review, which this Court has previously recognized are important. *In re Complaint of Rovas against SBC Mich*, 482 Mich 90; 754 NW2d 259.

Because the Board's petition and signature review practices were not promulgated under the APA, they cannot be used to review the Unlock Michigan petition. Michigan courts have routinely held that a rule that does not comply with the procedural requirements of the APA is invalid under Michigan law. *See Detroit Base Coalition for Human Rights of Handicapped v Dep't of Soc Servs*, 431 Mich 172, 183; 428 NW2d 335 (1988) (holding a rule that does not comply with the procedural requirements of the APA is invalid under Michigan law); *Pharris v Secretary of State*, 117 Mich App 202; 323 NW2d 652 (1982) (guidelines for Secretary of State hearing examiners published in an internal policy manual were not binding because they were not promulgated pursuant to the APA); *Michigan State AFL-CIO v Sec'y of State*, 230 Mich App 1,

28; 583 NW2d 701 (1998) (holding that the Secretary of State could enforce certain interpretations of the MCFA only through formal rules promulgated in accordance with the APA); *Pletz v Sec'y of State*, 125 Mich App 335, 367; 336 NW2d 789 (1983) ("[T]he Secretary of State is directed to promulgate rules and issue directives to effectuate the [Administrative Procedures] Act."); *Danse Corp v City of Madison Heights*, 466 Mich 175, 176; 644 NW2d 721 (2002) (holding guidelines utilized by the Tax Tribunal were not determinative, since they were not rules promulgated in accordance with the Administrative Procedures Act and there is no indication the legislature intended to waive the requirements of the APA).

The Secretary of State has previously recognized that its powers are limited by the APA and authorizing statutes, and that actions taken in contravention of the APA or the underlying statute are invalid. *See* 12/9/13 Interpretative Statement to State Bar of Michigan, at 3 ("This is precisely what you have asked the Department to do, contrary to both the MAPA and MCFA. The Department cannot create a new disclosure policy, applicable to the general public, through a declaratory ruling or interpretative statement.") (Appx. 349–351).

Additionally, in March of this year, the Court of Claims struck down the Secretary of State's signature matching standards for the absentee ballot process because they were not promulgated under the APA. *See Genetski v Benson*, Court of Claims No. 20-000216-MM (Murray, J) (Mar 9, 2021) (Appx. 388–403).[4] And in *Genetski*, there was not a statute requiring the Secretary of State to promulgate rules as there is here. The reasoning set forth in *Geneteski* should control and the same result should issue in this case.

[4] Pursuant to MCR 7.215(C)(1), Keep Michigan Safe cites *Genetski* for its applicability with respect to the proposition that the Secretary of State must utilize the formal APA rulemaking process in certain circumstances, for its persuasive value, and the recency of the decision.

At bottom, the Secretary of State has failed to promulgate rules governing the signature canvassing process under the APA despite a clear legislatively mandated directive to do so. There is no room for ambiguity – the Secretary of State has been required for years to promulgate the rules that MCL 168.31(2) calls for. Therefore, the Board's petition and signature canvassing procedures are invalid. Until the Secretary of State promulgates such rules, the Board may not consider or canvass the Unlock Michigan's petition signatures. *Martin v Dept of Corrections*, 424 Mich 553, 560–65; 384 NW2d 392 (1986) (where Legislature directed a state department to promulgate rules pursuant to the Administrative Procedures Act, department was not permitted to substitute policy directives for rules); *Palozolo v Dep't of Social Servs*, 189 Mich App 530, 532–33; 473 NW2d 765 (1991) ("We agree that the DSS' failure to promulgate PEM 515 pursuant to the rule-making procedures set forth in the APA renders it invalid[.]"); *see also Clonlara, Inc v State Bd of Ed*, 442 Mich 230, 240; 501 NW2d 88 (1993); *Oshtemo Charter Twp v Kalamazoo Co Rd Comm*, 302 Mich App 574, 584; 841 NW2d 135 (agencies are limited to the power and authority conveyed by statute).

Because the Board's practices were promogulated in violation of the APA, the Board may not take any actions with respect to Unlock Michigan's petition and there is no clear duty to justify this Court to issue a writ of mandamus.

1. Unlock Michigan's Arguments Against Rulemaking Ignore the Michigan Election Law and Fall Flat.

Before the Court of Claims in an unrelated case, Unlock Michigan argued that the Secretary of State essentially has no duty to comply with the requirements of MCL 168.31(2) because "shall" really does not mean "shall." Unlock Michigan relied on a bevy of unrelated cases to support this argument. The problem with this argument, however, and what Unlock

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Michigan ignores, is that the Michigan Supreme Court has previously recognized that "shall" *really does* mean "shall" in the context of mandatory Michigan Election Law requirements:

> However, because 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. [*Stand up for Democracy*, 492 Mich at 593.]
>
> * * *
>
> The Legislature's use of the term "shall" "'indicates a mandatory and imperative directive.'" Nowhere does the language of this provision indicate that compliance with the 14–point–type requirement may be achieved despite deficiencies. Indeed, other provisions of the Michigan Election Law, MCL 168.1 et seq., demonstrate that the Legislature knows how to construct language specifically permitting substantial compliance with regard to form and content requirements. [*Id.* at 601–02.]
>
> * * *
>
> Indeed, the use of the mandatory term "shall" in MCL 168.482(2), in the absence of any language indicating that substantial compliance with the statute's requirements suffices, indicates a clear intent that such a petition must strictly comply with the type requirement. [*Id.* at 602.]

Simply put, strict compliance with mandatory Michigan Election Law provisions is required and the cases Unlock Michigan relies upon to excuse this failure to comply are not cases decided under the Michigan Election Law.

For example, Unlock Michigan relied on *Dep't of State Compliance & Rules Div v Michigan Educ Ass'n-NEA*, 251 Mich App 110, 114; 650 NW2d 120, 123 (2002). There, MEA-NEA argued that the Secretary of State could not enforce the Michigan Campaign Finance Act against it because the Secretary of State failed to promulgate a rule further defining terms, which the MEA-NEA allegedly violated. *Id.* at 121. The Court of Appeals rejected that argument,

noting that "an administrative agency need not always promulgate rules to cover every conceivable situation before enforcing a statute." *Id.* (cleaned up). Importantly, in *MEA-NEA*, there was no specific requirement that the Secretary of State promulgate specific rules dealing with that section of the MCFA as there is here with respect to the Michigan Election Law. This case does not help Unlock Michigan.

Unlock Michigan's reliance on *Jim's Body Shop, Inc v Dep't of Treasury*, 328 Mich App 187, 192; 937 NW2d 123 (2019) is similarly misplaced. In *Jim's Body Shop*, again, there was no requirement that the Department of Treasury promulgate specific rules as there is here. And *Jim's Body Shop* merely dealt with allegations by the plaintiff that the Department of Treasury failed to follow its own manuals. The Court of Appeals' discussion there actually supports Keep Michigan Safe's argument that that the Board's manuals are not binding law and that they cannot be relied upon when rules are required. *Id.* at 200–01 ("In any event, the manual is not binding law, but merely guidance."). This case does not help Unlock Michigan either.

W Bloomfield Hosp v Certificate of Need Bd, 452 Mich 515, 517; 550 NW2d 223(1996), does not help Unlock Michigan either. For starters, the discussion in *W Bloomfield Hosp* regarding the relaxation of rules has no application here given this Court's previous ruling in *Stand up for Democracy*, 492 Mich at 603–04, that strict compliance with the Michigan Election Law is required. What is more, that principle at least presumes the promulgation of rules to be relaxed. There are no rules to relax here because they have never been promulgated. And *W Bloomfield Hosp* did not involve an administrative agency being required to promulgate a "rule" under the APA, but merely required the administrative agency to adopt a "plan" to help it to determine whether to grant certificates of need – that was a "plan" that "merely assist[ed] the agency in the

exercise of its discretion" of whether to issue certificates of need to applicants. *Id.* at 524. The facts and holding of *W Bloomfield Hosp* have no bearing here.

Vernon v Controlled Temperature, Inc, 229 Mich App 31, 33; 580 NW2d 452 (1998) does not help Unlock Michigan either. Again, it is not a case dealing with the Michigan Election Law, which must be strictly complied with according to the Michigan Supreme Court. *Stand up for Democracy*, 492 Mich at 603–04. In *Vernon*, the plaintiff challenged whether he had to provide a release to his employer for it to obtain information about government benefits he was receiving. *Vernon*, at 35–36. The Court of Appeals rejected the plaintiff's argument that his obligation to authorize the release of information as the statute required under *one section* was dependent on the requirement that the agency promulgate rules setting out standards for how employers were to provide notice of eligibility for social security eligibility benefits under *another section* of that statute. *Id.* at 38. The Court held that the plaintiff had an independent obligation to provide the release upon a request from his employer and that there were not rules promulgated dealing with an entirely different notification provision unrelated to the release was of no effect. *Id.* Here, the requirement to promulgate rules related to the verification of ballot question petition signatures is directly implicated and violated.

The rest of the cases Unlock Michigan relies upon follow this example: cases at first blush that may seem to help Unlock Michigan's position, but after a cursory review do not withstand scrutiny. Unlock Michigan also relies upon a treatise from Professor LeDuc. Those arguments suffer from the same infirmities already discussed. None of what Professor LeDuc discusses is based on the Michigan Election Law, which must be strictly complied with as this Court held in *Stand Up for Democracy*. LeDuc, Michigan Administrative Law, § 4:28 (June 2020). LeDuc admits that the "effect of the failure to do [promulgate rules] has not received a

great deal of consideration Michigan courts." *Id.* LeDuc goes on to discuss a case – *LundBerg v Corrections Commission*, 57 Mich App 327; 225 NW2d 752 (1975) – which held that "shall promulgate" is mandatory and granted a writ of mandamus requiring the agency to promulgate rules and setting a deadline for the initiation of the process. LeDuc, Michigan Administrative Law, § 4:28 (June 2020); *see also* MCL 24.238 ("A person may request an agency to promulgate a rule."). The Michigan Court of Appeals has previously recognized that the failure of an agency to promulgate rules, in light of a statute that required rules to be promulgated, can affect a party's due process rights. *See In re Turner*, 108 Mich App 583; 310 NW2d 802 (1981). That the Court of Appeals in *In re Turner* ultimately held that the opportunity for a contested case proceeding offered sufficient due process protection, *id.* at 589–90, is not dispositive here because that hearing was conducted "pursuant to the contested case provisions" of the APA and the hearings before the Board on the sufficiency of recall petitions are not. *Id.* What is more, at least one panel of the Michigan Court of Appeals has found that when an agency failed to promulgate rules pursuant to a statute that the agency "may" promulgate rules, the underlying statute could not be enforced until the agency promulgated rules to cover applications for renewals of licenses previously granted. *Department of Natural Resources v Bayshore Associates, Inc*, 210 Mich App 71; 533 NW2d 593 (1995). And another panel of the Court of Appeals has held an agency cannot act pursuant to guidelines where the statute requires rules because the failure to follow the statute in developing and implementing the policy deprives parties of due process when it is applied as a rule. *See Williams v Warden, Michigan Reformatory*, 88 Mich App 782; 279 NW2d 313 (1979); *see also In re Turner*, 108 Mich App 583 (recognizing lack of rules can affect due process rights).

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At the end of the day, the issue presented is simple and straightforward: a statute requires the Secretary of State to promulgate rules; this Court has previously held that mandatory requirements (*i.e.*, where "shall" is used) must be strictly complied with; and, the Secretary of State has failed to promulgate these rules. Accordingly, pursuant to established case law, *Bayshore Associates, Inc*, 210 Mich App 71, the Board cannot take any action with respect to Unlock Michigan's petition until these rules have been promulgated and there is, therefore, no clear legal duty sufficient to justify a writ of mandamus.

B. Pursuant to *Genetski*, the Board's Canvassing Procedures, Including the Unauthorized Sampling Methodology, Should Have Been Promulgated as Rules Under the APA and Were Not.

Alternatively, even if the Court finds that Secretary of State was not required to promulgate rules pursuant to MCL 168.31(2), the Board's manuals, which outline canvassing procedures for ballot initiatives, including the Bureau of Elections' staff sampling methodology (which is not authorized by the Michigan Election Law) should have been promulgated as rules and were not. Accordingly, any actions taken with respect to Unlock Michigan's petition are invalid. The Court of Claims' recent discussion in *Genetski* is and helpful in this regard.

In *Genetski*, the Allegan County Clerk and the Michigan Republican Party challenged guidance issued by Secretary Benson regarding the inspection of signatures on absent voter ballot applications and ballots. *Id.* at *2. The plaintiffs in *Genetski* based their challenge, in part, on the claim that Secretary Benson's guidance was a "rule" and thus should have been promulgated under the APA. *Id.* at *4–5. The Court of Claims granted summary disposition in favor of the plaintiffs on that particular claim:

> In sum, the standards issued by defendant Benson on October 6, 2020, with respect to signature-matching requirements amounted to a "rule" that should have been promulgated in accordance with the

> APA. And absent compliance with the APA, the "rule" is invalid. [*Id.* at *14.]

The Court's reasoning was based on long-standing Michigan case law holding that "[a]n agency must utilize formal APA rulemaking procedures when establishing policies that 'do not merely interpret or explain the statute or rules from which the agency derives its authority,' but rather '**establish the substantive standards implementing the program**.'" *Id.* at *8 (quoting *Faircloth v Family Indep Agency*, 232 Mich App 391, 403-404; 591 NW2d 314 (1998)) (emphasis added).[5] Under this framework, the Court of Claims determined the signature verification standards were a "rule," and that as such, the standards should have been promulgated under the APA. The Court of Claims came to this conclusion because the standards were generally applicable to all absent voter applications and ballots and contained a mandatory statement from Michigan's chief election officer that clerks had to perform their duties in accordance with the instructions, in addition to creating a mandatory presumption of validity. *Id.* at *7–8.

Like the instructions and guidance in *Genetski*, both manuals used by the Board implement the substantive standards for canvassing petitions. And like the instructions and guidance in *Genetski*, the manuals the Board uses to canvass petitions are of general applicability to all petitions submitted to the Board review and certification. Because these manuals were not promulgated under the APA they are invalid. *See* MCL 24.243 (compliance with APA required, otherwise rule is not valid); MCL 24.226 (agency may not adopt guidelines in lieu of rules); *Pharris*, 117 Mich App at 205.

[5] Under the APA, a "rule" is defined as "an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency." *See* MCL 24.207.

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Further supporting this argument is the Board's reliance on the recommendations of the Bureau of Elections' staff report, which utilizes a signature sampling methodology. *See* Staff Report (Appx. 198–200). The Michigan Election Law states that the Board "shall canvass the petitions to ascertain if the petitions have been signed by the requisite number of qualified and registered electors." *See* MCL 168.476(1). "Canvass" is not defined in that section of the Michigan Election Law or elsewhere. But to "canvass" is commonly understood to include the counting of total votes received – not estimating how many votes (or signatures) have been received – and this has support elsewhere in the Michigan Election Law. *See, e.g.*, MCL 168.167 ("The candidates of each political party for the office of state senator and representative receiving the greatest number of votes cast for candidates for said offices as set forth in the report of the board of canvassers canvassing said votes[.]"); MCL 168.807 ("Immediately after the canvass has been completed, the result, stating the total number of votes received by each person . . . .").

There is nothing in the Michigan Election Law or otherwise permitting the use of a sampling methodology "to **estimate** of the total number of valid signatures contained in the filing based on the validity rate." *See* Sponsoring a Statewide Initiative, Referendum or Constitutional Amendment Petition (Mar 1, 2021), pp. 10–11 (Appx. 324–348). So it is obvious that the Board is relying on those manuals to implement the substantive standards of their review and canvassing of initiative petitions and these methodologies and manuals should have gone through the rulemaking process and they never did.

On this basis, the Court should deny Plaintiffs' request for relief and dismiss their Complaint. The Board cannot properly canvass without the promulgation of rules.

C. Unlock Michigan's Arguments About Retroactivity of Rules Are Premature and Speculative.

Unlock Michigan argues that rules cannot be applied retroactively to its petition drive. Compl. ¶¶ 37–41. This argument is speculative and premature. It may well be that properly adopted rules could be identical to the existing guidelines which are not compliant with the APA. But that cannot be known until the rules are promulgated. Only after rules are promulgated are issues about retroactivity timely and relevant.

IV. The Board Failed to Provide Proper Notice of the Actions it Was Proposing to Take at its July 6, 2020 Meeting and Deprived Keep Michigan Safe of its Due Process Rights.

In addition to failing to strictly comply with the requirements of MCL 168.482b, the Board's approval of the form of Unlock Michigan's petition is invalid for failing to adhere to the procedural due process requirements required under Michigan law. In this case, the Board's notice for the July 6, 2020 meeting failed to provide notice to the public that the Board would consider whether to approve or deny *the form* of Unlock Michigan's petition or that on July 2, 2020, Unlock Michigan submitted an amended petition form adding reference to the initiative being placed on the November 2022 ballot if not adopted by the Legislature. The notice of the July 6, 2020 Board meeting only indicated that the Board would consider the "100-word summary of the purpose of the initiative petition sponsored by Unlock Michigan." *See* July 6, 2020 Notice (Appx. 001). Nowhere in the notice does the Board give any type of notice that it was planning on approving *the form* of Unlock Michigan's proposed petition or that Unlock Michigan submitted an amended form containing new and additional language on July 2. *See id.*

The notice also provides stringent requirements for how interested members of the public may participate in and be heard at the Board's meetings, including requiring interested members wishing to speak on a topic at the time of its vote to submit a written request to the Chairperson

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well prior to the beginning of the meeting. *See id.* However, as noted, the notice for the July 6 meeting did not tell the public that the Board would be approving or denying Unlock Michigan's proposed petition *form* or that Unlock Michigan submitted an amended petition form on July 2 – only that the Board would take "consideration of" the proposed petition summary, thus depriving Keep Michigan Safe of an opportunity to be heard and object.[6]

Michigan courts have long-held that when a public meeting also involves a contested hearing or issue, the notice must provide sufficient advance notice so that members of the public can be meaningfully heard. *Haven v City of Troy*, 39 Mich App 219, 224; 197 NW2d 496 (1972). As the Court of Appeals in *Haven* recognized, "a meeting is not necessarily a hearing," and that "[t]he right to a hearing imports an opportunity to be heard." *Id.* at 224. The *Haven* court went even further with respect to the public's right to be heard requiring that public bodies provide sufficient notice of *particular questions* that will be considered at public meetings that include a contested hearing. *Id.* (requiring "**notice that at a particular meeting of that body a particular question will be considered** and those interested in that question will be given an opportunity to be heard) (emphasis added).

The Board's failure to provide particularized notice that it was going to approve or deny *the form* of Unlock Michigan's petition at the July 6 meeting and that Unlock Michigan had submitted an amended demand on July 2 prevented Keep Michigan Safe and the public from exercising their fundamental rights to attend the meeting and voice their objections on a matter of great importance. *Haven*, 39 Mich App at 224. Few rights are as fundamental as the right to participate meaningfully and equally in the process of government. *Yick Wo v Hopkins*, 118 US

[6] In the past, when the Board has approved the form of a petition, that has been a separate agenda item. (*See, e.g.*, Minutes of January 28, 2020 Meeting (two separate agenda for summary and form of a petition) (Appx. 352–354).

356, 370, 6 SCt 1064, 30 LEd 220 (1886) (political rights are "fundamental" because they are "preservative of all rights").

The Board's failure deprived Keep Michigan Safe and the public of their fundamental rights to be heard on matters of great importance. *Haven*, 39 Mich App at 224. This Court should declare the form of Unlock Michigan's petition invalid.

V. The Petition is Defective in Several Ways.

The cardinal principle of initiative petitions – that signers have a right to know what they are signing – is repeatedly violated by the skeletal, legalese-filled summary and heading of the Unlock Michigan petition which tells signers nothing about the content or effect of the law being repealed. In its entirety the heading says:

> An initiation of legislation to repeal the Emergency Powers of Governor Act, 1945 PA 302, MCL 10.31 to 10.33, entitled "An act authorizing the governor to proclaim a state of emergency, and to prescribe the powers and duties of the governor with respect thereto; and to prescribe penalties." If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 8, 2022. The full text of the proposed legislation is as follows:
>
> INITIATION OF LEGISLATION
>
> An initiation of legislation to repeal 1945 PA 302, entitled "An act authorizing the governor to proclaim a state of emergency, and to prescribe the powers and duties of the governor with respect thereto; and to prescribe penalties." (MCL 1031 to 10.33).
>
> THE PEOPLE OF THE STATE OF MICHIGAN ENACT:
>
> Enacting section 1, 1945 PA 302, MCL 10.31 to 10.33, is repealed.

See Unlock Michigan Petition (Appx. 355). That is it – no plain English information of any kind about the law being repealed or the wide-ranging effect of the repeal. Michigan law requires far more information in a petition summary and heading than is provided here.

Public Act 608, which amended the Michigan Election Law, was enacted in December of 2018. Among other provisions, PA 608 added a new section 482a, which imposes new mandatory requirements relating to signatures that must be satisfied before a signature on a petition to initiate legislation may be counted by the Board. Specifically, MCL 168.482a(4) provides:

> If a petition under section 482 is circulated and the petition does not meet all of the requirements under section 482, any signature obtained on that petition is invalid and must not be counted. [*See* MCL 168.482a(4).]

This new legislative mandate creates a strict compliance standard previously not applicable. It renders past practices and precedents applicable to initiative petitions and petition signatures outdated and irrelevant. Past practice and precedent of the Board to approve petitions and signatures that substantially complied with the requirements of the Michigan Election Law, to give the benefit of the doubt to petition initiative groups, or to leave the decision to voters has been superseded by this new legislatively-imposed standard. Michigan law now requires that every element of an initiative petition must comply with each requirement relating to an initiative petition under MCL 168.482, including those in MCL 168.544c incorporated by reference within MCL 168.482. If a petition for the initiation of legislation is circulated and the petition does not meet all of the requirements of MCL 168.482, any signature obtained on that petition is invalid and should not have been counted by the Board.

For the reasons outlined below, none of the Unlock Michigan petitions fully comply with the requirements of MCL 168.482. Because none of the Unlock Michigan petitions strictly comply with the Michigan Election Law, the Board should have found under MCL 168.482a(4) that all of the signatures submitted by Unlock Michigan were invalid.[7]

[7] This Court has denied access to the ballot based on petition defects after petition drives. *See, e.g., Protect Our Jobs v Board of State Canvassers*, 492 Mich 763; 822 NW2d 534 (2012). Nor

A. Unlock Michigan's Petition Fails to Strictly Comply with the Michigan Election Law.[8]

1. Defective Use of a Short Title.

The initiative process is an alternative means to enact legislation and the right of initiative extends only to laws that the Legislature can enact:

> 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.

Const 1963, Art 2 § 9. Therefore, legislation proposed by initiative petition must meet all of the form and content requirements for legislation. *See id*; *Leininger v Secretary of State*, 316 Mich 644; 26 NW2d 348 (1947).

The Legislative Drafting Manual of the Legislative Service Bureau is clear that Michigan acts must be cited in all legislation by their short title *if they have one*:

> Cite a Michigan act, other than the act being amended, by its short title, if the act has one, and by both its public act number and the Michigan Compiled Law numbers assigned to that act. In general, a public act should be cited as follows:
>
> - the open meetings act, 1976 PA 267, MCL 15.261 to 15.275

[*Id.* at 40 (2020) (footnotes omitted).]

The purpose of this requirement, like most requirements for the contents of legislation, is transparency – to enable legislators reviewing legislation and potential signers reviewing a petition

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is it relevant that Unlock Michigan obtained an optional "approval as to form" by the Board before circulating petitions. There is no authorization for this process in the Michigan Election Law and the process is neither a complete review of a petition or authorization to use a petition that does not comply with the requirements of the Michigan Election Law.

[8] For ease of reference, a spreadsheet detailing the ways in which Unlock Michigan's petition fails to comply with the mandatory Michigan Election Law requirements is attached. Unlock Michigan Petition Defect Chart (Appx. 356–360).

to know the contents of the legislation or petition. *Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 441, 472; 206 NW2d 469 (1973). For example, in 2006 there was an initiated proposal to repeal the single business tax. The proposal included the short title as required:

> Enacting section 1. The single business tax act, 1975 PA 228, MCL 208.1 to 208.45, is repealed effective for tax years that begin after December 31, 2007.

2006 Journal of the House of Representatives at 2299 (August 9, 2006) (Appx. 361–378). In this petition, there is a short title in the summary – "Emergency Powers of the Governor Act" – but that short title is missing from the actual legislation reproduced on the petition: "Enacting Section 1 1945 PA 302, MCL 10.31 to 10.33, is repealed." Unlock Michigan cannot have it both ways. If the act has no short title, the summary is defective. Alternatively if the act has a short title, the legislation is defective for omitting it.

However, a review of the act and its amendments reveals *no* short title. *See* 1945 PA 302; 2006 PA 546. This usage stands in marked contrast to other public acts where the Michigan Legislature has specifically assigned a proper name. For example, "[t]his act shall be known and may be cited as the "emergency management act." *See* MCL 30.401; *see also* MCL 37.2101 ("[t]his act shall be known and may be cited as the "Elliott-Larsen civil rights act."). A search of the Michigan Compiled Laws (at http://legislature.michigan.gov) for the phrase "Emergency Powers of Governor Act" returns no results. Thus, the summary is defective for including a short title for a statute that does not have one. Even if Unlock Michigan demonstrates that the act has a short title – and it cannot – then the enacting clause is defective for failure to include it. Either way the petition's use of a short title is a fatal defect.

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2. The Full Text of the Proposal Does Not Follow the Proposal Summary on Unlock Michigan Petitions.

Under MCL 168.482(3), the full text of an amendment proposed by a legislative initiative must follow the summary of the proposal. According to Dictionary.com, the word "follow" means (1) to come next after something else in sequence, order of time, etc., or (2) to happen or occur after something else; come next as an event. The petitions submitted by Unlock Michigan do not comply with this requirement for two reasons. *First*, the summary is followed on the petition by the language, "If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 8, 2022," which is neither the text of the proposed amendment nor a statement authorized by or provided for anywhere in the Michigan Election Law. *Second*, after this unauthorized sentence, the heading for the proposal is repeated again, as part of the text of the proposal, but the heading is (a) not printed in capital letters in 14-point boldface type as required by MCL 168.482(2), (b) a heading and not a part of the full-text of the amendment, and (c) not followed by a summary of the proposal in 12-point type as MCL 158.482(3) requires for a heading.

3. The Balance of the Unlock Michigan Petitions Do Not Appear in 8-Point Type.

Various provisions of the Michigan Election Law establish type size requirements for elements included on an initiative petition. For example, the summary of a proposal must be printed in 12-point type. *See* MCL 168.482(3). The heading for an initiative petition must be printed in 14-point boldface type. *See* MCL 168.482(2). Under MCL 168.482(6) and 168.544c(1), after satisfying all other applicable typeface requirements, the balance of a petition must be printed in 8-point typeface. The Unlock Michigan petitions do not satisfy this mandate to use 8-point type. *First*, the campaign finance identification statement at the bottom of the Unlock Michigan

petition—"Paid for with regulated funds by Unlock Michigan, 2145 Commons Parkway, Okemos, MI 48864"—appears to be printed in 10-point type, not 8-point type as mandated by MCL 168.482(6) and 168.544c(1). The text used in the identification statement appears noticeably larger than the 8-point type used above the identification statement in the text of the Certificate of Circulator. The Michigan Election Law requires both to appear in the same type size, but the language is clearly of a different type size while the same type face and spacing is used. *Second*, the phrase "**THE PEOPLE OF THE STATE OF MICHIGAN ENACT**" is included in bold type and all capital letters on the Unlock Michigan petitions. Under MCL 168.482 and 168.544c, the only items on a petition to be printed in bold type are (1) the heading of the petition, (2) the two warning statements, and (3) the circulator direction statement. The text of a proposed amendment is required to appear in 8-point type, not 8-point boldface type and not in capital letters. The Unlock Michigan petition is defective in this respect too.

4. Petition Circulator Statement Does Not Appear at Top of Unlock Michigan Petitions.

Under MCL 168.482(8), an initiative petition must clearly indicate below the statement required by MCL 168.482(7) in 12-point type that "[i]f the petition circulator does not comply with all of the requirements of this act for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted." Because the statement required by MCL 168.482(7) was found unconstitutional by the Attorney General in an OAG, 2019-2020, No 7310 (May 22, 2019), the statement required by MCL 168.482(8) must appear at the top of an initiative petition. On the Unlock Michigan petitions, the petition circulator statement required by MCL 168.482(8) appears after and next to the heading of the petitions, and not at the top of the petitions. Unlock Michigan's petition is defective in this respect too.

In sum, under the standards imposed by the 2018 amendments to the Michigan Election Law, if a petition submitted by Unlock Michigan fails in any way to comply with the requirements imposed by MCL 168.482, then every signature on the petition is invalid and the Board is prohibited from counting any signatures on that petition. If all petitions for the Unlock Michigan proposal include the same deficiency, the Board is prohibited by MCL 168.482a(4) from counting any of the signatures submitted by Unlock Michigan. For the reasons stated above, none of the Unlock Michigan petitions fully comply with the requirements of MCL 168.482. Each of the petitions includes the deficiencies identified above. Because the cause the Unlock Michigan petitions do not comply with requirements imposed by the Michigan Legislature, the Board had a duty under MCL 168.482a(4) to find all of the signatures included on the Unlock Michigan petitions invalid and not count any of those signatures.

B. Other Deficiencies Fatal to Unlock Michigan's Petition.

1. The Full Text of the Legislation Incorrectly Includes "INITIATION OF THE LEGISLATION."

As set forth above, the legislation published in a petition must conform to all the form requirements of a legislative bill. No legislative bill is required or permitted to include the phrase "INITIATION OF LEGISLATION" – that phrase is unique to a petition *heading*. No legislative bill has ever included that phrase. It is a fatal defect for the petition to include that phrase in the text of the legislation. *Leininger*, 316 Mich 644.

2. The Legislation Fails to Include Subsequent Acts.

Section 1 of 1945 PA 302 was reenacted and republished by 2006 PA 546, but Unlock Michigan's petition includes no reference to the 2006 Act. 1945 PA 302 cannot be repealed except by repealing every act that enacted or reenacted it. The legislation in the petition is defective by failing to reference the 2006 Act.

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3. The Petition Violates the Constitution's Republication Requirement.

The Legislature cannot alter, revise, or amend a law by reference solely to the law's title. Rather, the affected sections must be published to show the effects of the proposed changes:

> No law shall be revised, altered or amended by reference to its title only. The section of sections of the act altered or amended shall be re-enacted and published at length. [Const 1963, art 4, § 25.]

The publication requirement applies to the revision, alteration, or amendment of a law by the people through the initiative process. *Protect MI Constitution v Secretary of State*, 297 Mich App 553, 575; 824 NW2d 299 (2012), *rev'd on other grounds*, 492 Mich 860; 819 NW2d 428 (2012); *see also Automobile Club of Michigan v Secretary of State*, 195 Mich App 613, 622–24; 491 NW2d 269 (1992) (*per curiam*). As explained by the Court of Appeals in *Protect MI Constitution*, this constitutional republication requirement broadly applies "not only to efforts to *amend* an existing law, but also to proposals that would revise or alter a law. Although similar, principles of construction require us to give meaning to each term, 'revise,' 'alter,' and 'amend,' lest any one of them be rendered surplusage or nugatory." *Protect MI Const*, 297 Mich App at 576. This broad reading fulfills the very purpose of transparency in a petition: giving the voters notice of what the petition does.

Plainly, when a law is repealed it is being "revised, altered, or amended" and therefore a repealer must republish the law being repealed. Unlock Michigan's petition fails to republish the law it is attempting to repeal. All it does is reference its section numbers, MCL 10.31 to 10.33. That is not enough to satisfy art 4, § 25 which requires that the content of those sections be republished in the petition. Certification can and should be denied on this basis alone.

4. The Summary is Defective.

The Michigan Election Law mandates that the Board make an official declaration regarding the adequacy and sufficiency of the petition. *See* MCL 168.477(1). The Board must also approve the summary of the proposed amendment's purpose. *See* MCL 168.482b. "In essence, the Board ascertains whether sufficient valid signatures support the petition and whether the petition is in the proper form." *Citizens Protecting Michigan's Constitution v Secretary of State*, 324 Mich App 561, 585; 922 NW2d 404 (2018). This includes ensuring that a petition strictly complies with each element set forth in the statute. *See e.g.*, *Council About Parochiaid v Secretary of State*, 403 Mich 396, 397; 270 NW2d 1 (1978) (Board determined that the petitioner complied with statutory form requirements when descriptive material was attached to the petitions during circulation); *Stand Up for Democracy v Secretary of State*, 297 Mich App 45, 55; 824 NW2d 220 (2012), *rev'd* 492 Mich 588 (2012) (Board rejected a petition that did not comply with statutory font requirements); *Auto Club of Mich Comm for Lower Rates Now v Secretary of State*, 195 Mich App 613, 624; 491 NW2d 269 (1992) (Board determined that a tear sheet did not comply with statutory form requirements). Unlock Michigan's petition fails to strictly comply with several mandatory requirements as set forth below.

In December 2018, the Michigan Legislature codified this strict compliance precedent, adding new section 482a to the Michigan Election Law, which states: "If a petition under section 482 is circulated and the petition does not meet all of the requirements under section 482, any signature obtained on that petition is invalid and must not be counted." MCL 168.482a(4). Accordingly, if a petition fails in any way to comply with the requirements under MCL 168.482, the petition is invalid and the Board is prohibited from counting any signature on that petition. If all petitions for an initiative include the same deficiency, the Board is prohibited by MCL 158.482a(4)

from counting any of the signatures. In this case as set forth below Unlock Michigan's petition fails in several ways.

a. A 48-Word Summary that Merely Restates the Statutory Title and its Legal Jargon in No Way Satisfies the Requirements of MCL 168.482b.

The summary fails to inform electors of the content and effect of the proposal in violation of the mandatory requirement imposed by the Michigan Election Law. MCL 168.482 requires that "*a summary* in not more than 100 words *of the purpose of the proposed amendment or question proposed must follow* [the petition heading] and be printed in 12-point type." *See* MCL 168.482(3) (emphasis added). In this case, the skeletal 48-word summary of the Unlock Michigan petition merely repeats the technical text of the proposal, *i.e.*, the style and text of a piece of legislation, which *already must be printed on the face of the petition*. *See* MCL 168.482(3). As such the summary does nothing to achieve the fundamental purpose of a summary, which is to inform the voters of the subject matter and purpose of the proposal. The mere repetition of a statutory title, replete with legislative jargon that already appears on the face of the petition, in no way satisfies the requirement of a "summary."

A proposal summary which simply restates the technical text of the proposal renders the mandatory summary requirement of MCL 168.482 and 168.482b surplusage. *South Dearborn Envtl Improvement Ass'n, Inc v Dep't of Envtl Quality*, 502 Mich 349, 360–61; 917 NW2d 603 (2018) (when interpreting a statute, courts must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory).

Plainly, by adding language to MCL 168.482(3) and adding MCL 168.482b, the Legislature intended the summary to be more than that which was already required on the petition prior to the 2018 amendments. Unlock Michigan's petition summary adds nothing to the petition contrary to

the Legislature's clear statutory instructions and therefore violates the Michigan Election Law. *See Stand Up for Democracy*, 492 Mich 588 at 603–04 (requiring strict compliance).

Moreover, the summary's use of legal jargon and the legislative style is contrary to the requirement that the summary use words "that have a common everyday meaning to the general public." *See* MCL 168.482b(2)(d). In this case, the petition summary merely states that if approved, the proposed act will repeal a statute and recites the legislative title of the statute: "An act authorizing the governor to proclaim a state of emergency, and to prescribe the powers and duties of the governor with respect thereto; and to prescribe penalties." This statement is anything but common language and is not drafted in a way that the general public can readily understand the powers and duties that Unlock Michigan is trying to strip from the office of Governor. *See, e.g.*, Nat'l Labor Relations Bd., *NLRB Style Manual: A Guide for Legal Writing in Plain English*, 51 (2000) (noting that "hereby, herein, hereinafter, hereto, therefor, therefrom, therein, thereof, therewith, to wit, unto, vis-à-vis, viz., whereby, and wherein" are all "legal jargon that should be omitted or replaced with plain English-words in common usage.").

What is more, the petition summary uses the term "repeal" without explaining the effect of a "repeal." The term "repeal" has specific effect under Michigan law. *See, e.g.*, MCL 8.4a (explaining the effect of repeal and limits); MCL 8.4 (explaining the effect of repealing a repealing statute). Rather than using this legal term of art, the petition summary should have explained in common language that the proposal seeks to *remove, cancel*, or *end* the emergency powers of the Governor. The summary's use of highly technical and unexplained legal jargon directly contradicts the Legislature's mandate to avoid such language. Accordingly, the approved summary does not strictly comply with MCL 168.482b. *See Stand Up for Democracy*, 492 Mich at 603–04.

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b. The Unlock Michigan Petition Summary is Not a True and Impartial Statement of the Purpose of the Proposal.

Under MCL 168.482b, a petition summary approved by the Board must be a "true and impartial statement of the purpose" of the proposal that "does not create prejudice for or against the proposed amendment or question presented." MCL 168.482b(2)(b). As detailed below Unlock Michigan's petition summary fails to meet those standards.

i. Three Decades of Michigan Practice Prior to the 2018 Amendments.

The Board's decades-long experience applying the standards of MCL 168.482b provides guidance for the Board to consider and apply to the Unlock Michigan petition summary, which they ignored here. The standards used in MCL 168.482b are taken from several other statutes that have long governed the preparation of ballot summaries of proposals in Michigan. *Compare* MCL 168.482b *with* MCL 168.32(2), 168.485, and 168.643a. The contents of those ballot summaries provide guidance for what constitutes a compliant petition summary under MCL 168.482b.

The Director and Board in their previous ballot summaries have repeatedly disclosed the *effect* of a proposal on existing law if adopted. For example, the summary for 2018 Proposal 1 stated that the proposal would:

- *Change* several current violations from crimes to civil infractions.

(emphasis added). The ballot summary for 2012 Proposal 2 repeatedly stated how other laws would be affected, including future laws:

This proposal would:

- Grant public and private employees the *constitutional right to organize and bargain collectively* through labor unions.
- *Invalidate existing or future state or local laws* that limit the ability to join unions and bargain collectively, and to negotiate

> and enforce collective bargaining agreements, including employees' financial support of their labor unions. Laws may be enacted to prohibit public employees from striking.
>
> - *Override state laws* that regulate hours and conditions of employment to the extent that those laws conflict with collective bargaining agreements.

(emphasis added). Similarly, the ballot summary for 2012 Proposal 4 was clear on the proposal's impact on current laws:

> This proposal would:
>
> - *Allow in-home care workers to bargain collectively* with the Michigan Quality Home Care Council (MQHCC). *Continue the current exclusive representative of in-home care workers until modified in accordance with labor laws.*

(emphasis added). Again and again, for decades ballot summaries prepared by the Director and approved by the Board under the same standards as MCL 168.482b have described the *effect* of the proposal on existing laws. For example, the summary for 1998 Proposal B disclosed exemptions from transparency laws:

> The proposal would:
>
> 3) establish a gubernatorially appointed, publicly-funded oversight committee, *exempt from Open Meetings Act* and *whose records, including confidential medical records, and minutes are exempt from Freedom of Information Act*;

(emphasis added). In the summary for 1996 Proposal D, its legal effects are disclosed:

> The proposed law would:
>
> 4) *Allow individuals to sue for damages caused by violations and to seek injunctions.*

(emphasis added). There are many more examples. *See, e.g.*, 1994 Proposal B (disclosing loss of right to a criminal appeal if adopted); 1994 Proposal C (disclosing a limit on the legal right to sue if adopted); 1992 Proposal D (disclosing a limit on legal right to sue if adopted); 1988 Proposal B

(disclosing creation of several legal rights of crime victims) (Appx. 379–387). In a stark departure from past practice, this petition summary fails to disclose its legal effects.

ii. Applying Three Decades of Practice to Unlock Michigan's Petition Summary.

Unlock Michigan's petition summary fails to comply with the standards set forth in MCL 168.482b because the language fails to disclose several material effects of the proposed repeal of the statute. In essence, the petition summary misleads by omission. The petition summary therefore does not comply with the Michigan Election Law's mandate that the summary constitute a "true and impartial statement of the purpose" of the proposal. *Stand Up for Democracy*, 492 Mich at 603–04 (requiring strict compliance).

The petition summary fails to describe the effect of the proposal beyond merely stating that it would result in the repeal of a 1945 statute dealing with states of emergency. The petition summary omits that a repeal of the statute in its entirety would have permanently and severely curtailed *any* governor's emergency powers to respond to disasters and public emergencies in the future by limiting responsive actions to those available to the governor under the Emergency Management Act of 1976. The failure to include this material effect renders the proposal summary untruthful and inaccurate in violation of MCL 168.482b.

This information – that future governors would have been severely curtailed in their ability to respond to and manage public emergencies and disasters – is exactly the type of information that would give an individual "serious ground for reflection," *see Alaskans for Efficient Gov't, Inc v State*, 52 P3d 732, 735 (Alaska 2002), when deciding whether they want to sign any such petition and its absence renders the petition summary untruthful and inaccurate and therefore non-compliant with MCL 168.482b, *see Stand Up for Democracy*, 492 Mich at 603–04, because it is

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misleading by omission. The failure of Unlock Michigan's petition summary to advise electors of this material effect of the initiative proposal is a misleading omission that invalidates the summary.

5. Unlock Michigan's Summary Does Not Inform Electors of the Subject Matter of the Petition in Common Everyday Language.

The summary fails to inform electors in common everyday language of the subject matter and effect of the petition. Under MCL 168.482b, the summary "must be worded so as to apprise the petition signers of the subject matter of the proposed amendment or question proposed . . . ." *See* MCL 168.482b(2)(c). In this case, the very text of Unlock Michigan's summary reveals that it does not even attempt to inform voters of the subject matter, which includes the effect and purpose of the petition, stating that the petition seeks to repeal a certain law "*entitled*." Merely reciting the *title* of the statute in the petition summary does not describe or reference the content of the statute. The summary does nothing to achieve the fundamental purpose of a summary, which is to inform the voters of the subject matter and purpose of the proposal. Rather, the summary merely restates the legislative title of the act to be repealed.

Also missing from Unlock Michigan's petition summary is any explanation regarding the "powers and duties of the governor" that will no longer be available to address a "state of emergency." Under the statute, a governor was permitted to "promulgate reasonable orders, rules, and regulations as she or he consider necessary to protect life and property or to bring the emergency situation within the affected area under control." *See* MCL 10.31a. The Legislature declared the intent of the statute was "to invest the governor with sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster." *See* MCL 10.32. A voter that was asked to sign the petition was not informed or advised that the repeal proposed by Unlock Michigan would have stripped these powers from the office of Governor. In the context

of a ballot proposal to amend the Michigan Constitution, the Michigan Court of Appeals held that a proposal that "contains omissions or defects likely to mislead voters" is invalid. *Bailey v Muskegon Cty Bd of Comm'rs*, 122 Mich App 808, 822; 333 NW2d 144 (1983). The result in this case should be no different.

The Unlock Michigan petition summary contained omissions and defects that likely misled electors asked to sign the petition. As a result, the summary failed "to apprise the petition signers of the subject matter of the proposed amendment or question proposed" and should have been then declared invalid – and now should be declared invalid too – for failing to strictly comply with MCL 168.482b. *Stand Up for Democracy*, 492 Mich at 603–04.

6. Unlock Michigan's Summary Fails To Inform Electors That If Approved By The Legislature, The Initiative Is Not Subject To Gubernatorial Veto.

Under Article 4, Section 33 of the Michigan Constitution, the governor must approve or veto any piece of legislation. *See* Const 1963 art 4, § 33. However, the approved petition summary here omitted that under Article 2, Section 9 of the Michigan Constitution, the governor may not veto legislation enacted by initiative. *Id* art 2, § 9 ("No law initiated or adopted by the people shall be subject to the veto power of the governor[.]"). The summary's failure to disclose this material fact renders the approved summary untruthful and inaccurate, and therefore not in strict compliance with MCL 168.482b as *Stand Up for Democracy* requires, because it misled voters. *Bailey*, 122 Mich App at 822. The summary's omission of this key fact, which would have certainly given most voters "serious ground for reflection" in deciding whether they wanted to sign the petition, flies in the face of what these summaries are intended to provide; that is, so voters can "reach informed and intelligent decisions." *Alaskans for Efficient Gov't, Inc*, 52 P3d at 735 (Alaska 2002).

7. The Petition Confused Signers by Referencing the 2022 Election.

The form of Unlock Michigan's petition contains a sentence after the summary in a smaller font, stating as follows:

> If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 8, 2022.

This type of extraneous information is not permitted by MCL 168.482. MCL 168.482 includes only the following three mandatory requirements as to the form of the petition:

- If the measure to be submitted proposes a constitutional amendment, initiation of legislation, or referendum of legislation, the heading of each part of the petition must be prepared in the following form and printed in capital letters in 14-point boldfaced type;

- A summary in not more than 100 words of the purpose of the proposed amendment or question proposed must follow and be printed in 12-point type; and

- The full text of the amendment so proposed must follow the summary and be printed in 8-point type. [*See* MCL 168.482(2)-(3).]

Absent from MCL 168.482 is a requirement or the authority to reference the date on which the petition will appear on the ballot. Michigan law does not permit this Board to read into statutes terms and conditions which do not appear in that very statute. *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 72; 894 NW2d 535 (2017) (courts will not read requirements into a statute which do not appear in the plain language of the statute). This is especially true where the Legislature has provided a specific list of those statements that are mandatory to appear on a petition, and the date of the election is not one of the mandatory requirements. *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74; 711 NW2d 340 (2006) (the enumeration of specific conditions eliminates the possibility of other conditions under the legal maxim *expressio unius est exclusio alterius*).

What is more, the statement that the petition initiative would appear on the November 2022 ballot confused and misled signers because the petition was circulated less than three months before the November 2020 election. *Bailey*, 122 Mich App at 808. Courts interpret the words, phrase, and clauses in a statute according to their ordinary meaning. *State News v Mich State Univ*, 481 Mich 692, 699-700; 753 NW2d 20 (2008). "[W]here the statutory language is clear and unambiguous, the statute must be applied as written." *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002).

Here, the plain text of the statute does not permit Unlock Michigan to include such extraneous information on the petition. References to the 2022 election do not tell a potential petition signer anything about the *purpose* of the petition. MCL 168.482(2)-(3). Rather, references to a future election only serve confuse and mislead potential signers about what effect, if any, the 2022 election will have on their choice to sign or not sign the petition in 2020. For example, it is likely that voters were misled into thinking that the repeal of the statute would not have gone into effect until 2022, leaving Governor Whitmer with sufficient powers to respond to the COVID-19 pandemic. This misdirection is, of course, impermissible. *Bailey*, 122 Mich App 808. The inclusion of references to the dates of elections, which is not permitted under the Michigan Election Law, renders the petition form not in strict compliance with the Michigan Election Law as *Stand Up For Democracy* requires, making the form of the petition approved by the Board invalid. *Stand Up For Democracy*, 492 Mich at 603–04. Because extraneous information about the 2022 election is not permitted under the Michigan Election Law and because it serves no purpose other than to mislead or confuse electors, the petition form is invalid.

CONCLUSION

For these reasons, the Court should dismiss Plaintiffs' Complaint and uphold the Board's decision not to certify the Unlock Michigan petition.

Respectfully submitted,

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